Supreme Court, U.S.
FILED
001121 JAN - 8 2001
OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH A KOZEL,
Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari
To The Illinois Supreme Court

APPENDIX, VOLUME 2

KENNETH A. KOZEL
PETITIONER
801 SECOND STREET
LA SALLE, IL 61301
(815) 223-4400

101pp

Volume 2

Report & Recommendation of the
Hearing Board of 11-5-97 29-128

BEFORE THE HEARING BOARD OF THE
ILLINOIS ATTORNEY REGISTRATIONAND
DISCIPLINARY COMMISSION

In the Matter of:
KENNETH ALAN KOZEL,
Commission No. 96 CH 050
Attomey-Respondent.
No.1519727

REPORT AND RECOMMENDATION OF THE HEARING BOARD

INTRODUCTION

T'he hearing in this matter was held on February 5, 6, 7, 8, 11, 12 and 13, 1997 at the offices of the Attorney Registration and Disciplinary Commission, One Prudential Plaza, 130 East Randolph Drive, Suite I100, Chicago, Illinois before a Panel of the Hearing Board consisting of Vincent E. Vitullo, Chair, Frances Skinner, lawyer member, and Robert Adams, public member. Millicent Willis and Vasiliki Verveniotis appeared on behalf of the Administrator. Respondent appeared pro se.

The Pre-Hearing Record

The complaint in this matter was filed January 11, 1996. Approximately four pre-hearing conferences were held in this matter and numerous other orders were necessitated by the voluminous number of motions Respondent filed. The following motions and orders were filed on the following dates:

February 7, 1996 Respondent filed a Motion to Dismiss or, in the Altemative, to Disq.ualifv

the Administrator from further proceedings in the matter and the assignment of a special prosecutor to be made.

On February 13, 1996 the Chair denied the Respondent's Motion to Dismiss and ordered the Respondent to answer or otherwise plead on or before March 1, 1996. Respondent then filed a motion for leave to file briefs in support of the Motion to Dismiss.

On February 26, 1996 Respondent filed a Motion to Strike and Dismiss the Administrator's Report pursuant to Commission Rule 253. The Administrator filed a response.

The Chair denied Respondent's Motion to Strike or Dismiss the Administrator's Report Pursuant to Commission Rule 253 on March 6, 1996.

On March 4, 1996, Respondent filed a Motion to Order the Administrator to Place in the Record Testimony Under Oath or a Sworn Statement Regarding how Motions are Handled by the ARDC Including the Preparation of orders by ARDC Personnel and to Order all Orders be Signed Bv the Chairman and that ARDC Personnel be barred from affixing the Chairman's signature to such orders.

On March 5, 1996, Respondent filed a Motion to Continue the Proceedings Generally.

On March 6, 1996, Respondent filed a Motion to Dismiss the Complaint for Failure to Attached Required Exhibits as Required by the Code of Civil Procedure. On that same date Respondent filed a Motion to Dismiss Counts IX and X of a Complaint filed by the Administrator A2ainst Kenneth A. Kozel.

On April 5, 1996, Respondent filed a Motion to Dismiss Counts 1. 11, and III of a Complaint filed by

the ARDC Alleging Professional Misconduct by Attomey Kenneth A. Kozel because of a Lack of Jurisdiction by the ARDC, a Motion to Dismiss Count IV of the Complaint filed by the

2

Administrator and directed towards Kenneth A. Kozel, a Motion to Dismiss Count V of the Complaint Filed Herein for Failure to State a Cause of Action Alleging a Prima Facie Case of Professional Misconduct by Attomey Kenneth A. Kozel, a Motion to Dismiss Counts VI [6], VII [7], VIII [8] and XI [11] for Failing to State a Cause of Action Alleging Professional Misconduct a Motion to Reconsider the Panel's Denial of Kozel's Motion to Dismiss Counts 9 and 10 of the Administrator's Complaint, a Motion for Reconsideration of the Denial of Kozel's Motion to Dismiss Count XII [12] because it Relitigates an Issue already Disposed of by the Inquiry Panel, not the Administrator and a Motion to Dismiss Count 13 of the Administrator's Complaint.

On April 11, 1996, Respondent filed a Motion to Quash the Notice of Deposition for Failure to Comply with the Rules of the Illinois Supreme Court as to the Place of Deposition.

On April 12, 1996, the Administrator filed the Administrator's Response to Respondent's Motion to Ouash the Notice of Deposition and Motion to Compel.

On April 29, 1996, the Respondent filed his Rebuttal to the Administrator's Response to Respondent's Motion to Quash the Notice of Deposition.

On April 29, 1996, the Respondent filed his rebuttal to the Administrator's Response to

Respondent's Motion to Compel.

On April 11, 1996, Respondent filed a Motion to Dismiss or to Otherwise Restrict the Administrator's Request to Produce.

On April, 12, 1996, the Administrator filed a Motion to Deem the Allegations of the Complaint Admitted Pursuant to Commission Rule 236. Respondent filed a response to the Administrator's Motion to Deem the Allegations of the Complaint Filed Herein as Admitted and Motion to Deny the Administrator's Request to Deem the Allegations Admitted. The

Administrator's Motion to Deem the Allegations of the Complaint Admitted was denied on July 16, 1996.

On May 3, 1996, Respondent filed a Motion for additional Time to Respond to the Administrator's Response to the Respondent's Motions to Dismiss Counts 1, 11, 111, IV, V, VI, VII, VIII, XI and XIII and Respondent's Motions to Reconsider the Denial of Motions to Reconsider Denial of Respondent's Motion to Dismiss Counts IX, X. and XII.

On May 10, 1996 the Administrator filed a report Regarding Respondent's Motion for Additional Time to Respond.

Respondent's Motion for Additional Time to Respond to the Administrator's Response to Kozel's Motions was denied on July 16, 1996.

On June 14, 1996 Respondent filed his Reply to the Administrator's Response to the Respondent's Motions to Dismiss Counts 1, 11, 111, IV, V, VI, VII, VIII, XI and XII, and Respondent's Motion to

Reconsider Denial of Respondent's Motion to Dismiss Counts IX, X and XII.

On July 16, 1996 Respondent filed Respondent's Motion to Dismiss Counts 1, 11 and III of a Complaint filed by the ARDC alleging Professional Misconduct by Attomey Kenneth A. Kozel, the Respondent's Motion to Dismiss Count IV of the Complaint filed by the Administrator and directed toward Kenneth A. Kozel, Respondent's Motion to Dismiss Count V of the Complaint filed herein for failure to state a cause of Action alleging a prima facie case of professional misconduct by attorney Kenneth A. Kozel, Respondent's Motion to Dismiss Counts VI, VII, VIII and XI for Failure to State a Cause of Action alleging Professional Misconduct, Respondent's Motion to Reconsider the Panel's denial of Kozel's Motion to Dismiss Counts 9 and I0 of the Administrator's

4

Complaint, Respondent's Motion for Reconsideration of the Denial of Kozel's Motion to Dismiss Count XII because it Relitigates an Issue already Disposed of by the Inquiry Panel, not the Administrator, Respondent's Motion to Dismiss Count 13 of the Administrator's Complaint were denied. Also on July 16, 1996, Respondent was deemed to have waived any further objections to the Administrator's complaint and was ordered to file an answer to the complaint on or before August 28, 1996. Furthermore, the Administrator was ordered to file an Amended Complaint regarding all counts containing references to Rule 8.2.

On August 7, 1996, Respondent filed a Motion to Reconsider Sections of an Order Entered by the Chairman of the Hearing Panel on July 16, 1997.

Specifically in this pleading Respondent again requested Counts 1, 11, 111, and XII be dismissed and further requested he be allowed to file responsive pleadings rather than an answer and, finally, requested he be permitted to file his answer after the administrator filed her amended complaint.

The Respondent's Motions to Dismiss Counts 1, 11, III and XII were, again, denied on August 12, 1996, but the Respondent was granted his request not to file his answer in a piece-meal fashion and the Respondent was ordered to answer the First Amended Complaint in its entirety on or before August 30, 1996

The Administrator filed her First Amended Complaint on August 7, 1996.

On May 13, 1996, Respondent filed Respondent's First Request to Produce.

On June 13, 1996 the Administrator filed the Administrator's Response to Respondent's Request to Produce.

On August 27, 1996, Respondent filed his First Demand to Admit the Genuineness of Documents.

5

On August 29, 1996, Respondent filed an Illinois Supreme Court Rule 219 Motion wherein
He alleged the affidavit provided and signed by Counsel for the Administrator failed to sufficiently comply with Supreme Court Rule 214 as it was not signed by the Administrator herself. This Motion was denied September 4, 1996.

On September 19, 1996 the Administrator filed Administrator's Reply to Respondent's Demand to Produce (sic).

On September 17, 1996, Respondent filed his Second Demand to Admit the Genuineness of Documents.

On October 3, 1996, the Administrator filed her reply to the Respondent's Second Demand to Admit. On that same date, Respondent filed a Third Demand to Admit Genuineness of Documents and his First Demand to Admit Facts.

On October 3, 1996 the Administrator filed a Motion to Compel Production of Documents or, in the Altemative, to bar the Respondent from Offering Exhibits and offering Testimony Concerning Exhibits at Hearing.

On October 8, 1996, the Administrator filed her First Request for Admission of Facts and Genuineness of Documents.

On September 10, 1996, Respondent filed an answer to the Administrator's First Amended Complaint.

On October 9, 1996, the Respondent filed a Motion for a Protective Order.

On October 10, 1996, the Administrator was ordered to filed an amended complaint with all documents referred to therein on or before October 16, 1996, and the Respondent was ordered to file an amended answer meeting the standards of Commission Rule 23 3 on or before November 6, 1996

6

which was later extended, by order to November 27, 1996.

On November 6, 1996 Respondent filed a Motion to Quash a Request to Produce Documents and a Demand to Admit the Genuineness of Documents.

The Respondent's Motion to Quash the request was denied November 20, 1996.

On December 11, 1996, Respondent filed a Motion for Leave to File Response to

Administrator's First Request for Admission of Facts and Genuineness of Documents Instanter.

On January 2, 1997, Respondent filed Kenneth Kozel's Response to the Administrator's Response to Respondent's Motion for Leave to file Resp2onse to Administrator's First Request for Admission of Facts and Genuineness of Documents.

On December 16,1996, the Administrator filed a Motion for Sanctions Pursuant to Supreme Court Rule 219 wherein she requested the Respondent be barred from introducing any documentary evidence at hearing. This was denied in part and granted in part on January 7, 1997. It was granted as to Counts 1, 11, 111, V, VI, VII and VIII.

On January 30, 1997 Respondent filed a Motion to Vacate Part of Order Entered January 7, 1997, Granting in Part the Administrator's Motion for Sanctions for Refusal to Admit or Deny the Validity of Documents. Respondent claimed in this motion that he never received a copy of the Administrator's Motion requesting such sanctions.

On December 6, 1996 the Administrator filed a Motion to Deem the Allegations of the Complaint Admitted Pursuant to Commission Rule 236.

On January 8, 1997 the Administrator filed a Motion for Leave to Conduct a Videotaped Evidence Deposition of Judge William R. Banich of the Thirteenth Judicial Circuit.

On January 14, 1997, Respondent filed an Objection to the Administrator's Motion for Leave

7

To Conduct a Videotaped Evidence Deposition. The motion was granted on January 16, 1997.

On January 14, 1997 Respondent filed his Second Demand to Admit Facts, his Third

Demand to Admit Facts, his Fourth Demand to Admit Genuineness of Documents and his Sixth (sic) Demand to Admit Genuineness of Documents. The Administrator filed objections noting that the requests were not material or relevant to the issues contained within the complaint and because Respondent failed to provide the Administrator with sufficient time to respond to the demand.

On January 14, 1997 Respondent filed a Motion to Continue the Merit Hearing.

On January 15, 1997 Respondent filed a Motion to Vacate Proceedings all Proceedings (sic) in this Cause from the Filing of the Complaint to Date and for Other Relief.

On January 15, 1997, a letter to the deputy clerk of the commission was received at the ARDC via facsimile wherein Respondent indicated he would be unable to be available for the pre-hearing scheduled for that date. Respondent stated that the pre-hearing conference therefore would have to be rescheduled and, further, objected to pre-hearing conferences being held by telephone. The pre-hearing was held without Respondent.

On January 30, 1997 Respondent filed a Motion to Reconsider and Vacate the Pre-hearing Order of January 16, 1997.

On January 21, 1997, Respondent filed a Motion for Supervisory Order with the Illinois Supreme Court. The Administrator filed her Objection to Motion for a Supervisory Order on January 27, 1997. The Respondent filed his Reply- to the Administrator's Objections to Motion for Supervisory Order Instanter and that filing was accepted by the Supreme Court on February 7, 1997. On February 13, 1997 Respondent's Motion for Supervisory Order was denied.

On January 24, 1997 Respondent filed a Motion for Supervisory Order in the Illinois

8

Supreme Court. On approximately January 31, 1997 the Administrator filed her Objections to the Respondent's Motion for Supervisory Order.

On February 4, 1997 Respondent filed a Motion Objecting to the Location of the Merit Hearing.

On February 4, 1997 Respondent filed a Motion to Dismiss Counts 1-3 and 12 and the Administrator filed Administrator's Response to Respondent's Motion to Dismiss Counts 1-3 and Motion to Dismiss Counts 4-12.

On February 5, 1997 Respondent filed a Motion to Continue the Hearing Scheduled for February 5, 1997. Respondent further filed on that date a Motion to Reallege all Prior Motions Which Relate to the Substance of the Complaint. This motion was denied on the record at hearing. On February 4,1997 Respondent filed a Motion to Dismiss Counts 4-12. This motion was denied on the record at hearing.

Finally, on February 4, 1997 Respondent filed suit in Federal Court requesting a Temporary Restraining Order, and a Preliminary Injunction and Permanent Restraining Order to enjoin the ARDC from from hearing the cause entitled 96 CH 50. This request was denied by the Federal Court.

The bulk of the motions filed by Respondent in this case have been utterly without basis in law or fact, so much so that the Chair was compelled to add to his September 4, 1996 order in this matter the following statement: "Respondent has engaged in a pattern of filing motions and petitions which have no basis in law or fact and has not cooperated in these proceedings. In this pre-hearing

conference Respondent could not discuss any meaningful attempts at discovery and refused to discuss the suitability of hearing dates. Should this pattern of obstruction continue suitable sanctions will be imposed." In addition when the Respondent finally filed his answer to the amended

9

complaint the answer amounted to a blanket denial of the allegations contained within the complaint.

In addition Respondent filed what amounted to the same motion repeatedly. Specifically, and as an example, we note tat he made motions to dismiss various counts on between approximately three and six occasions either individually or as a part of a blanket Motion to Dismiss. We must make this estimate approximate as the Respondent filed a Motion to Reallege all previous Motions relating to the substance of the complaint and, therefore, an exact number depends upon how one might calculate such a figure.

We find these motions to be frivolous, redundant and examples of an overall ethical and professional failing on the part of Respondent as well as a continuing pattern of obstruction of justice.

Pleadings and Evidence

The Administrator filed a thirteen count second amended complaint against Respondent on October 25, 1996 pursuant to Supreme Court Rule 753(b). Respondent was granted leave to file his answer to the complaint and did so on December 1, 1996.

The Administrator's evidence consisted of Exhibits one through ten and twelve through seventy-one and the testimony of the Judge John Squires, John A. Maurice, Gerald Hunter, John F. Dornik, E. Kent Ayers, John R. Ardaugh, Judge Cynthia Raccuglia, Charles H.

Marshall, Judge James N Lanuti, Judge Stephen D. White, Paul Root Jim Baker, David Carey, Dan Mueller, Judge Howard Ryan, Chief Judge Robert Carter, Johanna Yeager and Stephen Yeager. The Respondent's evidence consisted of Exhibits 1-9, 1-B, 2-1, 2-19, 2-20, 3-1 through 3-10, 42-43 and the testimony of himself and John Betts,

10

Respondent testified that he is an honorably discharged veteran and graduated from Creighton law school in 1975. Respondent further testified that be has been married for twenty-four years and has three children. (Tr. 1010-1011)

Counts I and II

Complaint

On September 29, 1982 the Administrator of the Attorney Registration and Disciplinary Commission filed a complaint against John A. Betts for allegedly engaging in attorney misconduct. On October 3, 1985, the Supreme Court of Illinois concluded Betts had engaged in attorney misconduct and suspended him from the practice of law for six months.

At all times relevant to the events alleged in the complaint, Supreme Court Rule 773 provided, in part, that an attorney who is the subject of a disciplinary proceeding that results in the imposition of discipline has a duty to reimburse the ARDC for costs incurred in the investigation, hearing and review of such matters. On June 25, 1991, the Supreme Court of Illinois entered an order allowing the Administrator's petition for costs against Betts in the amount of $3,833.06 pursuant to Supreme Court Rule 773. On September 11, 1991 the Supreme Court of Illinois entered an order denying Betts' motion to vacate the June 25, 1991 order. As of

November 5, 1991 Betts has not paid any part of the S3,833.O6 judgment. About November 5, 1991 Betts filed a petition for relief under Chapter 7 of the Bankruptcy Code in the United States District Court for the Northern District of Illinois.-Respondent represented Betts in the bankruptcy proceedings. (In re John Betts, 91 B 21706)

On March 4, 1992, the Administrator sought leave to file a complaint to determine the whether a debt owed to the ARDC in the amount of $3,833.06 was dischargeable. Respondent was

11

sent notice via overnight mail informing him that a bearing concerning the Administrator's request would be conducted on March 6, 1992. On that date neither Respondent nor his client appeared pursuant to the Administrator's notice of March 4, 1992. In their absence Bankruptcy Judge John Squires heard the Administrator's motion for leave to file the complaint and to determine whether Betts' obligation was dischargeable. On February 24, 1993, Respondent filed a motion for supervisory order before the Supreme Court of Illinois, in which Respondent alleged that the Administrator had not provided Betts with adequate notice of hearing of the adversarial complaint and that Juleann Hornyak Clerk of the Supreme Court of Illinois, had improperly certified documents which were attached as exhibits to the Administrator's pleadings. Respondent's motion for supervisory order also alleged that Judge Squires knew that Betts had not received adequate notice of the hearing, and that the Administrator and Juleann Hornyak, Clerk of the Supreme Court of Illinois, had presented false evidence. Respondent stated that Judge Squires knew

that "Robinson and then Commission attorney Ruffle M. How's had 'cooked the books' as far as notice to Betts. But, John Squires was afraid of Robinson and the power of her office. Betts had to be the sacrificial lamb and that's what happened." Respondent argued that these errors tainted Judge Squires' conduct and required an investigation by the Supreme Court of Illinois.

On August 10, 1993, the Federal Bankruptcy Court issued its final order in ARDC v Betts, 92 A 00325. The Court determined that Betts' debt to the ARDC was non-dischargeable. On August 20,1993 Respondent filed a notice of appeal before the U.S. District Court in the Northern District of Illinois The matter was briefed by both parties. On January 24, 1994, Judge Paul B. Plunkett entered a memorandum opinion and order affirming the ruling of the Bankruptcy Court. On February 17, 1994. Respondent filed a motion to alter or amend the memorandum opinion and

12

order. Respondent's memorandum in support of the motion to alter or amend stated in part:
Bankruptcy judges are subject to the ARDC, pander to their every wish and whim and are always going to rule in their favor. After all, the bankruptcy Court thinks it's like being on the side of angels...This attorney remembers a story in the Wall Street Journal where in one Federal District where the District Court Judges would not even take the same elevator as the Bankruptcy Court Judges. That can probably mean anything you want it to mean.

Respondent's allegations concerned the judge's qualifications or integrity because they indicated that

Bankruptcy Judge Squires was biased in favor of the ARDC, and that he would not fairly administer in the proceedings. Respondent knew or reasonably should have known that his allegations that Squires was biased in favor of the ARDC related to the judge's qualifications or integrity, and that it was false, Respondent's statements regarding the integrity of Squires was knowingly false or made with a reckless disregard as to its truth or falsity.

On March 25, 1994, Respondent filed an additional pleading that stated in part. "that Judge Plunkett's an old prosecutor." Respondent's allegations concerned the judge's qualifications or integrity because it indicated that Judge Plunkett, due to his former position as a prosecutor, was biased in favor of the ARDC, and that he was not impartial. Respondent's statement suggested that Judge Plunkett could not fairly administer justice in the proceedings. Respondent knew or reasonably should have known that the allegations of impropriety by Judge Plunkett were false. Respondent's statements regarding the integrity of Judge Plunkett were knowingly false or made with reckless disregard as to their truth or falsity.

Judge Plunkett denied the motion to alter or amend on April 4, 1994, and issued a rule for Respondent to show cause why he should not be sanctioned in the amount of $1,000.00 for filing frivolous pleadings. Judge Plunkett concluded that Respondent's pleadings on the motion to alter

13

or amend presented no arguments beyond those which had already been rejected. Respondent knew or should have known that his motion to alter or amend contained no additional facts or law to support his

arguments or to provide a basis upon which Judge Plunked could alter or amend his prior ruling.

On May 2, 1994, Respondent filed a notice of appeal with the U.S. Court of Appeals on behalf of John Betts in Betts v. ARDC On June 21, 1994, Judge Plunkett sanctioned Respondent in the amount of $1,000.00, pursuant to the rule to show cause of April 4, 1994. On July 8, 1994, Respondent filed a notice of appeal before the U.S. Court of Appeals regarding the order for sanctions against him. Respondent moved to consolidate that appeal with the prior appeal on behalf of Betts. The Court of Appeals denied Respondent's motion to consolidate, but later consolidated the cases on its own motion. Oral argument was held on Respondent's appeal on January 18, 1995. Following oral argument, the Court affirmed the sanctions against Respondent from the bench.

On or about January 18, 1995, Respondent told a reporter from the Chicago Daily Law Bulletin that the Court's decision was a "flip approach" and that he imagined Judge Coffey decided the case before the oral argument, despite the fact that the judges were attentive and took notes while [Respondent] spoke."

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another-in violation -of rule 1.2(t)(l) of the Illinois Rules of Professional Conduct; bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct; making a statement of material fact or law to a tribunal which the lawyer knows or reasonably

should know is false, in violation of Rule 3.3(a)(1) of the Illinois

14

Rules of Professional conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct: and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

Respondent admits Betts has not paid any of the judgment entered against him and states he only partially represented Betts and that he did not represent him throughout the bankruptcy proceedings. Respondent further admitted that neither he nor Betts appeared at the March 6, 1992 proceedings but asserts this is because they did not receive notice of such proceeding. Respondent further asserts he did not represent Betts at the time of the proceeding. Respondent admits that on August 10, 1993 the Federal Bankruptcy Court issued its final order in ARDC v Betts Respondent further admits that on August 20, 1993 a notice of appeal was filed before the U.S. District Court in the Northern District of Illinois in ARDC v. Hells. Respondent further admits the motion to alter or amend on was denied on April 4, 1994, and admits a rule to show cause was issued as to why Respondent

should not be sanctioned in the amount of $1,000.00 for filing frivolous pleadings.

Evidence

John Betts testified be was a lawyer licensed to practice law in the State of Illinois from February of 1976 until May of 1986, when he was suspended from the practice of law for six months, and from November 1986 until his license was revoked by the Illinois Supreme Court in

15

May of 1992. tr. 691-692)

On November 27, 1990 the ARDC filed a petition with the Illinois Supreme Court seeking approximately $3,833.06 in costs from Betts in connection with his 1986 suspension pursuant to Supreme Court Rule 773. Betts contested the petition for fees because, he alleged, the proceeding had been completed six or seven years earlier and Supreme Court Rule 773 was not in effect at the time of his suspension. The Court ruled in favor of the Administrator of the ARDC on June 27, 1991 and Betts filed a Motion to Reconsider which was denied September 13, 1991. (Tr. 692-694, Admin. Ex. 2)

Betts filed a petition for bankruptcy on March 23, 1992. The case was assigned number 91 B 21706. United States Bankruptcy Court Judge John H. Squires was appointed to the case and presided over an adversarial proceeding entitled Attorney Registration and Disciplinary Commission the Supreme Court of Illinois v. John Betts tr. 15-17, 694, 891-892, Admin. Exs. 1 and 2)

An adversary proceeding is a matter related to a bankruptcy proceeding and its purpose, in this case, was to determine whether Betts' obligation to the

ARDC relating to the assessment of costs by the Illinois Supreme Court was dischargeable. Respondent represented Betts in this proceeding. (Jr. p. 16, 18, 698-699, Admin. Ex. 2)

Betts asserted that in March of 1992 the ARDC appeared in bankruptcy court ex. parte after claiming that they had provided Betts with notice, via overnight service, of a hearing to be held March 6, 1992. Betts testified this form of notice was in violation of Local Rule 12 which requires two days notice of a proceeding. Betts claimed that Judge Squires knew about the problem with notice, said he did not believe it made any difference and ignored it. (Tr. 695-697, 895)

16

Respondent filed a motion requesting Judge Squires recuse himself on July 31, 1992 and Judge Squires denied this request on August 13, 1992. Judge Squires based his denial on his contention that it was not well founded in fact. Judge Squires did not, however, characterize the motion as frivolous nor did he sanction Respondent. Betts filed a motion to dismiss the adversary proceeding on April 8, 1992 which was denied June 16, 1992. Judge Squires granted the motion of the ARDC for summary judgment in the amount of $3,833.06 on January 7, 1993. This ruling was upheld by Federal Judge Paul E. Plunkett on January 24, 1994. Dens then filed a Motion to Alter or Amend on February 17, 1994 which was denied on April 5, 1994. Respondent filed an appeal on Betts' behalf on May 12, 1994 which was denied. (Tr. 18-19, 21, 33-34, Admin. Exs. 4, 5, 7 and 9)

Respondent also filed a Motion for Supervisory Order in the Supreme Court of Illinois on February 22,

1993. The Motion was denied on March 12, 1993. (Tr. 19, Admin. Exs. 3 and 4).

Betts testified that there were certain documents filed by the ARDC in the adversary proceeding that were questionable. Specifically, Betts alleged that there were at least one hundred sheets of paper filed which were allegedly certified by the Illinois Supreme Court Clerk as genuine but, in actuality, were not genuine, did not come from the Supreme Court Clerk's office and had been falsified. Betts testified that the documents had been filed with the Clerk of the ARDC rather than with the Supreme Court. (Jr. 699)

Judge Squires testified he was unaware of any improper conduct with regard to case number 92 A 325 on the part of Juleann Hornyak (Clerk of the Supreme Court), Mary Robinson (Administrator of the ARDC) or Ruth A. Howes (Counsel for the Administrator) as Respondent alleged. Judge Squires further testified that the decision he made in the case was not influenced by

17

Mary Robinson and the power of her office, but was based upon the federal bankruptcy court and the applicable case law and that his rulings were fair and impartial and that there was no reason he could not be impartial. Judge Squires testified that be has never had any objection to Respondent appearing before him and added that so long as Respondent is admitted to practice he will treat him like any other lawyer. tr. 19-20, 33, 36)

Findings of Fact and Conclusions Law

We find the testimony of Respondent and Betts to be considerably less credible than that of Judge Squires in reference to these counts. We further find that Respondent's efforts to discharge the debt to the

ARDC in the bankruptcy proceeding was without rational basis and amounts to a frivolous pleading.

Count I

We find the Administrator proved by clear and convincing evidence that the Respondent engaged in violated the Illinois Rules of Professional Conduct: asserting a position of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(F)(1); making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1); making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a); engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Count II

We find the Administrator proved by clear and convincing evidence that the Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(f)(1); bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, public officer,

or of a candidate for election or appointment to judicial or

18

legal office, in violation of Rule 8.2(a); engaging in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

19

Count III

Complaint

In 1989, Respondent agreed to represent John A. Maurice in a bankruptcy case and filed a Chapter 13 case which was later converted to a Chapter 7 case. Sometime thereafter, John A. Dornik, a creditor who had obtained a judgment against Maurice in 1987, filed a dischargeability complaint against Maurice under Title 11 U.S.C., secs. 523(a)(2)(A) and 523 (a)(6). The Bankruptcy Court later found the debt Maurice owed to Dornik non-dischargeable. The District Court later affirmed the Bankruptcy Court's decision, and Respondent then appealed to the U.S. Court of Appeals for the Seventh Circuit. Prior to filing the appeal, Respondent had not sought or obtained a stay of the District Court's order and while the appeal was pending, Dornik sought enforcement of the 1987 judgment in State Court.

On November 8, 1993, Respondent filed a second Chapter 13 case, In re John A. Maurice, 93 B 23478, on behalf of Maurice, thereby staying Dornik's collection efforts. Dornik filed a motion to lift the automatic stay on November 19, 1993, serving both Respondent and Maurice that day, and also notice that

the motion would be heard November 24, 1993 in Chicago.

Respondent filed this action against Dornik for no substantial purpose other than to embarrass, delay or burden Dornik, and to interfere with Dornik's efforts to enforce his judgment against Maurice. At all times relevant to this complaint; Bankruptcy Rule 3015(b) stated:

The debtor may file a Chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the Court may direct. If a case is converted to Chapter 13, a plan shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and

20

on notice as the Court may direct.

Respondent knew or should have known that he was required to file a Chapter 13 Bankruptcy plan within the time provided by Bankruptcy Rule 3015(b). Respondent failed to file a plan within the time provided by the Bankruptcy Rule. On November 24, 1993. neither Respondent nor Maurice appeared for the hearing on Dornik's motion. On that date, the Bankruptcy Judge entered an order which lifted the automatic stay, but also continued the hearing on Dornik's motion until December 17, 1993. The Bankruptcy Court's November 24, 1993 order granted Respondent leave to file responsive pleadings by December 8, 1993. Respondent knew or should have known of the order shortly after it was entered.

On December 17, 1993, Respondent filed a motion to alter or amend the November 24, 1993 order.

In this motion Respondent alleged he had phoned the Bankruptcy Court's chambers on November 24, 1993, and had been advised that the motion was not on the call that day. Respondent contended that the Court lacked jurisdiction because the matter should have been heard in Joliet Illinois. Respondent also filed a motion to dismiss alleging that Dornik's actions constituted improper harassment. At the hearing on December 17, 1993, Respondent filed a motion to disqualify Judge John H, Squires, contending that Squires was not impartial and treated Respondent and Maurice, "differently than he treats other debtors and attorneys who come before him." Respondent further contended that Judge Squires "went along with" Dornik's continued harassment of Maurice. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Bankruptcy Judge Squires was biased against Respondent and his client that the judge was involved in a conspiracy or agreement with Dornik related to the alleged harassment of Maurice, and that he could not fairly administer justice in the proceedings. Respondent knew or reasonably

21

should have known that his allegations concerning Judge Squires related to the Judge's qualifications or integrity, and that they were false. Respondent's statements regarding the integrity of Judge Squires were knowingly false or made with a reckless disregard as to their truth or falsity. On January 12, 1994, the Bankruptcy Court denied Respondent's motion to disqualify Judge Squires. On that same date, the trustee's motion to dismiss was granted because Respondent failed to file a plan with the petition as

required under Bankruptcy Rule 3015(b). The Bankruptcy Court also determined that Maurice had failed to pay the first installment of the filing fee. The Court found this case had been tiled in bad faith because the motive in filing the case was to obtain the benefits of a stay without having to post a supersedeas bond. The January 12, 1994 order also stated that Respondent's action crossed "the line of what constitutes professional and civil behavior. It undermines the merits of his respective clients' cases." The Court lifted the automatic stay, and sanctioned Respondent and his client. Respondent was ordered to complete continuing legal education in the areas of bankruptcy and legal ethics. The Court further advised that it would report Respondent's conduct to the ARDC and the Executive Committee of the U.S. District Court for the Northern District of Illinois.
As of October 18, 1995, the date that Panel D of the Inquiry Board of the Commission voted that a complaint be filed against Respondent in this mailer, Respondent had not taken any continuing legal education classes or paid the sanction of $2,282.00.

On February 111994, Respondent filed motions to alter or amend the judgment of January 12, 1994 as to his client and himself. In his motion to alter or amend the judgment as to Maurice, Respondent stated: What is sad about this case, is that Judge Squires is so prejudiced against the debtor

22

and the debtor's attorney, and was so intent on finding bad faith and a reason to dismiss this case with prejudice, that he did not even bother to do the most fundamental thing, check the clerk's records to see if

payment of the first $40.00 installment had been made, before he entered his order of January 12, 1994.

In addition Respondent argued:

The dismissal of the debtor's case with prejudice, is another example of how Judge Squires has lost his objectivity, and of Judge Squires' refusal to treat the debtor and the debtor's attorney like everyone else that appears before him... For some reason, Judge Squires does treat Maurice differently than he does Dornik.

Finally Respondent argued:

Judge Squires cites the case of Attorney Registration and Disciplinary Commission v. Betts The debtor's attorney gets the distinct impression that Judge Squires is going to make the debtor and the debtor's attorney pay dearly for that debtor's attorney's representation of unpopular clients like Betts...The debtor is being prejudiced because of Judge Squires' dislike forte debtor's attorney... Judge Squires should not penalize the debtor for his obvious dislike of the debtor's attorney, or for the debtor's attorney's representation of an unpopular client in the case of ARDC v. Betts

Respondent concluded that "If Judge Squires is truly not prejudiced against the debtor as he claims, he should vacate the dismissal with prejudice, and reinstate the case," In his motion to alter or amend as to the debtor's attorney, Respondent adopted all paragraphs of the motion to alter or amend as to the debtor, and argued further that "Judge Squires should have simply disqualified himself from this case when he was considering an attempt to impose discipline on the debtor's attorney, and should do so now, since he has made himself a witness in any disciplinary proceeding that may arise, out of his entry of the order of January 12, 1994." On March 31, 1994, the Court

amended the portion of its opinion which found that Maurice failed to pay the first installment of the filing fee, but otherwise affirmed its decision of January 12, 1994.

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when

23

the lawyer knows or reasonably should know that such action would serve merely to embarrass or maliciously injure another in violation of Rule 1 .2(f)(1) of the Illinois Rules of Professional Conduct; failing to act with reasonable diligence in representing a client, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct; bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct; using means to represent a client that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4,4 of the Illinois Rules of Professional Conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of Illinois Rules of Professional Conduct; and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

Respondent denies all allegations contained in this count.

Evidence

John A. Maurice first met Respondent in 1981 when he retained Respondent to defend him in a dissolution of partnership and accounting proceeding filed by attorney Gerald Hunter on behalf of John Dornik in the Circuit Court-of LaSalle County; Dornik claimed; in this proceeding, that Maurice owed him $20,000.00. Respondent prepared a verified answer in the matter for Maurice which contained an admission that Dornik had made a capital contribution of $20,000.00 to the business which, according to Maurice, was not true. Maurice noticed the mistake when he read the

24

answer prior to signing it but thought it could be amended later. Maurice had no recollection of Respondent telling him to be certain of what the document said prior to signing it nor was he sworn prior to signing, and assumed his signing it was a formality. (tr. 58-59, 63, 83, 86, 88-89, 121-122)

Respondent, in contrast to Maurice, testified he reviewed the answer repeatedly with Maurice and then told him to come back and sign it to fulfill the verification. When Maurice returned to Respondent's office to sign the answer, Respondent claims he had Maurice read it again, and caused him to swear prior to signing it. Respondent testified Maurice was not rushed while reviewing the answer. (Tr. 975-976)

Approximately six months after the complaint was filed Hunter bad a discussion with Respondent regarding possible settlement. At that point Hunter asked Respondent why Maurice didn't just return the $20,000.00 capital contribution. Respondent told Hunter that Maurice had contributed $20,000.00 to the

partnership as well. Hunter told Respondent that partnership law dictates that you take back what you bring in. Shortly after that discussion Respondent amended the pleadings from a theory that alleged the admission of a capital contribution to a theory that alleged that the payment was for the right to be a partner. tr. 123-124)

Respondent testified that Maurice refused to attend the hearings but stated he never attempted to withdraw from the case even when Maurice refused to cooperate. Maurice never received any letters from Respondent with regard to the status of his case and that when he called, Respondent told him that there was no activity in his case most of the time. However, Maurice acknowledged that during the course of the suit with Dornik, he would go to Respondent's office to check on the case. In 1987, a trial was held in state court and Dornik was awarded $12,500.00 based on Maurice's fraud. Within 30 days of the entry of that order Hunter spoke with Respondent and informed him

25

that they would not appeal if Maurice did not appeal and paid the $12,500.00. To the best of Hunter's recollection Respondent did not respond to the offer and Hunter had no recollection of Respondent telling him Maurice did not have the money and that he should reconsider the demand. (Tr. 62, 64, 84, 89-90, 125-126, 143, 147-148, 976, 1042, Admin. Ex. 16)

After the ruling, Maurice and Respondent discussed the possibility of filing bankruptcy or an appeal. Maurice denied Respondent's allegation that he suggested Maurice pay the $12,500.00 because it could get worse if he appealed it. Respondent testified

Maurice would not even consider paying the $12,500.00. Respondent then filed an appeal on behalf of Maurice and Hunter filed a cross appeal on behalf of Dornik. Respondent testified that he had a discussion with Hunter but Hunter never offered to settle for less than the full amount. Maurice testified Respondent never advised him tat Dornik, through Hunter, had made offers to resolve the dispute and that he only learned of these offers after discharging Respondent. Dornik prevailed on appeal and was awarded $20,000.00. Maurice received a copy of this order directly from the court rather than from Respondent. Maurice asked Respondent if they could appeal the case again. Respondent filed a petition for leave to appeal with the Illinois Supreme Court but the petition was denied. Following the decision by the Supreme Court not to take the case. Hunter saw Respondent and told him not to bother having Maurice file bankruptcy (which he assumed would be his next plan) because it was a fiduciary debt and could not be discharged. Respondent testified he performed research on that area of bankruptcy law and believed,: based on that research,-that such-a debt was dischargeable absent a finding of fraud. At that point Hunter was offering to accept payment of the entire amount plus interest as payment in full. (Fr. 67, 82, 84, 90-91, 94, 127-129, 140-141, 973-974, 1045)

Maurice did not have the $20,000.00 required to pay the judgment and told Respondent he

26

wished to file bankruptcy. Respondent then prepared the bankruptcy petition and filed it. Judge Squires presided over the bankruptcy proceeding and over the adversary proceeding related to the bankruptcy which

was filed by Hunter on Dornik's behalf. The adversary proceeding sought a judgment that Maurice could not discharge the $20,000.00 debt to his client. Judge Squires held a hearing, ruled the debt was not dischargeable and ordered Maurice to pay an additional $9,250.00.
(Tr. 22, 92-93, 71, 74, 130-132, 159)

Maurice testified that Respondent told him through bankruptcy he could get relief from debts including the Dornik judgment. Maurice further asserted Respondent did not keep him advised of the status of his bankruptcy and, when questioned, told him nothing was going on. Maurice never participated in any hearings with regard to the adversary proceeding because Respondent never told him that he had to appear. In the first Maurice bankruptcy proceeding and its related adversary proceeding, Judge Squires held that the debt owed by Maurice to Dornik was not dischargeable under bankruptcy code Sections 523 (a)(2) or (a)(6) which was based, in part, on a fraud finding. Maurice testified he received a letter from the court informing him the bankruptcy plan had never been filed. Judge Squires never received the bankruptcy plan and Maurice has no recollection of Judge Squires declining to approve the plan although Respondent testified that was the case. Maurice further denied that he had authorized Respondent to appeal the ruling which held that the bankruptcy plan was unsatisfactory. Respondent, however, testified Maurice authorized every appeal and every item- filed in connection with the Dornik litigation and the bankruptcies. (Tr. 39, 72-74, 104-105, 962, 965, 967)

Hunter recalled that a settlement discussion which took place in the summer of 1991 wherein he

offered $20,000.00 waiving all interest but Respondent did not respond to the offer. Dornik

27

initiated collection proceedings in October of November of 1991. (Tr. 133-134)

In November of 1993. Respondent filed a second Chapter 13 bankruptcy on Maurice's behalf. Maurice did not have the $20,000.00 to obtain an appeal bond of the second bankruptcy. Maurice had no recollection of making a motion to excuse the filing of said bond nor does he recall the motion being turned down. Maurice testified he signed the petition for the second bankruptcy on the advice of Respondent. The purpose of this filing, according to Maurice, was to stop wage garnishments filed by Dornik. This goal was accomplished for a brief period. Maurice does not know if he authorized Respondent to file an appeal when the garnishments began again. Maurice testified Respondent never told him he filed the second Chapter 13 bankruptcy had been filed nor did he keep him advised as to the status of that proceeding. Maurice ultimately received a letter from the Court informing him that the Chapter 13 case had been denied or terminated. Respondent testified Maurice then asked him to file a third-petition for bankruptcy. At that point Respondent testified he told Maurice that Judge Squires had instructed him not to file another petition. Respondent testified Maurice instructed him to file the petition anyway. Respondent then prepared the petition but asked Maurice to allow him to think about whether they should file it for a couple of days. Specifically, respondent told Maurice he felt there was a good chance Judge Squires would hold them in contempt if they filed it. Ultimately Respondent

testified he told Maurice he could not file the petition. Maurice had no recollection of Judge Squires telling him that he was not to file another Chapter 13 case within the following six months of the denial of the second petition. Maurice believed Judge Squires order applied to Respondent and not to himself. Maurice did recall going to Respondent's office after Judge Squire's ruling in the second case and telling him he wanted a third Chapter 13 case filed in proper order. Maurice signed a petition for a third

28

bankruptcy at that time. (Tr. 23, 74-76, 79, 100, 102, 111-112. 114-115, 118, 134, 965, 967-968)

Maurice denied he said to Respondent "No way in hell is he going to preside over my case" in reference to Judge Squires. Maurice testified he could not recall whether he was angry with Judge Squires but stated he thinks Judge Squires is an honest man and his decision was correct based on the materials available to him. Maurice testified that he never had any discussions with Respondent regarding (Judge Squires and) Judge Squires' ability to make fair and impartial decisions in his bankruptcy case. Respondent never informed Maurice that he intended to file a motion to disqualify Judge Squires nor did he provide Maurice with copies of any motions to disqualify Judge Squires. Maurice did not authorize Respondent to file such a motion. Maurice did not authorize Respondent to file any motions to alter or amend any orders that were entered by Judge Squires, nor did Respondent provide Maurice with copies of any orders to alter or amend any such motions. Respondent in contrast testified Maurice did not want Squires to hear the second bankruptcy case and authorized the filing of the motion to disqualify

Judge Squires. Respondent testified he filed this motion under the federal code which states that a litigant may allege that a judge's impartiality might reasonably be in question which he believes was the situation. Judge Squires denied the motion. (Tr. 76-78, 95, 103, 135, 963, 965-967)

Maurice terminated Respondent's services by registered letter which was returned to Maurice and by regular U.S. mail on June 14, 1994. Maurice then retained John Renzi to represent him in the bankruptcy-proceedings; Maurice does not recall whether he fired Respondent after Respondent told him he would not file the third chapter 13 case. Maurice terminated Respondent's representation because he felt Respondent had done nothing for him. Following the termination Maurice never authorized Respondent to take further actions on his behalf Maurice went to the Federal building

29

and determined the previous Chapter 13 proceeding was still going on. Maurice subsequently withdrew the action and stated no other attorney has filed a third Chapter 13 on his behalf On June 9, 1994, Respondent was supposed to give Maurice his papers but failed to do so on that date or at any time since that date. Respondent told Maurice he had turned aver all documents but Maurice only had items sent to him from the court. tr. 79-81, 114-115, 119)

Judge Squires testified he did not treat Maurice or Respondent at all differently than he treated any other attorney or litigant and believes he was fair and impartial regarding Maurice's bankruptcy proceedings. Hunter also testified he felt Judge Squires had bent over backwards to be fair to Maurice and Respondent

and that Squires' rulings in the case were correct under the law. Judge Squires testified that in his opinion Respondent's motion to recuse him in the Maurice matters was not well founded in law or fact and only served to slow the proceedings. Hunter also testified that Respondent's motions caused delay in the proceedings and estimated he spent hundreds of hours responding to Respondent's motions for which he was paid on an hourly basis. Hunter filed a motion for fees with the Seventh Circuit and in the first Chapter 13 proceeding which was denied for technical reasons but was ultimately awarded a total of $9,000.00 from Respondent. Respondent completed paying this amount one or two weeks prior to the disciplinary hearing. (Tr. 23-25, 33-34, 40-41, 136-138, 140, 142143, 150, 157)

In January of 1994 Judge Squires issued an order and memorandum opinion ordering Respondent to complete sixteen hours of continuing legal education in the area of bankruptcy and eight hours of continuing legal education in the area of legal ethics within one year and ordered Respondent to file a certificate as evidence that he had, in fact, complied with the order. Respondent did not complete the continuing legal education within the one year period but did so

subsequently. Judge Squires testified Respondent did not provide a certificate attesting to his participation of such classes though he had knowledge of Respondent attending two of the courses because Judge Squires also attended those courses. (Tr. 25,27,31, 138)

Findings of Fact and Conclusions of Law

We find the testimony of Hunter, Judge Squires and Maurice to be credible and note that Respondent

displayed a lack of knowledge of bankruptcy law in connection with the Maurice case.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following rules of Professional Conduct: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(0(1); failing to act with reasonably diligence in representing a client, in violation of Rule 21.3; bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1; using means in representing a client that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, in violation of Rule 8.2(a); engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

Counts IV and VI and X

Complaint

In 1984 Respondent represented Tracy Greenwood, successor administrator of the estate of John Gilbert Greenwood in the consolidated cases of Estate of Greenwood, 84 P 62 and Greenwood v. NIGAS, 84 L 179, in the Thirteenth Judicial Circuit.

On November 23,1993, the Circuit Court of LaSalle County granted a preliminary injunction in favor of NIGAS. Respondent appealed to the Third

District Appellate Court of Illinois on behalf of Greenwood, alleging that the order was improperly entered in Will County. Briefs were filed by both parties. In April 1994, Respondent filed a motion to strike the appellee's brief, alleging that

31

the brief contained the facsimile signature of E. Kent Ayers. counsel for NIGAS, rather than an original signature. NIGAS maintained that the brief bore an original signature, and that assuming arguendo that the brief did contain a facsimile signature, it would still comply with Illinois Supreme Court Rule 137.

At all times relevant to this complaint Rule 137 provided in part that "If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the Court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the party or parties the amount or reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee." Moreover, at all times relevant to this complaint. Rule 137 provided that the remedy for a signing in violation of the Rule is the imposition of a sanction and not striking the brief.

On April 21, 1994. the Appellate Court for the Third District denied Respondent's motion to strike. On June 15, 1994, Respondent filed a motion for supervisory order before the Supreme Court of Illinois asking that NIGAS' brief be stricken because it was not signed. NIGAS responded to the motion on June 21,

1994 contending that the question of whether the signature complied with Rule 137 had been addressed twice before on a prior appeals. NIGAS requested that Respondent be sanctioned-for filing a spurious motion. - On June22, 1994, the Supreme Court of Illinois denied the motion for supervisory order. On July 19, 1994, the Court sanctioned Respondent, and ordered him to pay attorney's fees and other expenses incurred by NIGAS in defending the motion for supervisory order. Respondent's purpose in filing the motion was merely to harass or maliciously

32

injure Ayers.

Between November, 1990, and January 7, 1994, two judges recused themselves in both matters and two motions for change of venue filed by Respondent had been granted. By letter dated December 15, 1993, Respondent complained to Ray Breen (Executive Director of the Judicial Inquiry Board) that Judge Stephen D. White had made "racial slurs" against his client. He also complained that Judge White had prohibited his client from collecting on her judgment. On January 7, 1994, Respondent filed a motion to substitute judges for cause in case numbers 84 P 62 ad 84 L 179, in which Respondent alleged that Judge Stephen D. White's decisions were racially motivated. Respondent stated therein that "On December 10, 1993, and at the request of NIGAS, Judge White directed that TRACEY GREENWOOD appear before him on January 7, 1994, for no specific purpose, other than to be asked whether she can read, and whether she can add two and two, things that he would never ask a white person." (emphasis in original) Respondent also suggested that Judge White favored the Northern

Illinois Gas Company (NIGAS) because of a personal and business relationship with the company. On January 7, 1994, Judge William R. Banich conducted a hearing on the motion to substitute Judge White for cause. Judge Banich found no evidence to support the allegations, and denied the motion. Respondent then filed a motion to substitute judges as a mailer of right.

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know. that -such action would serve merely to harass or maliciously injure in violation of Rule 1.2(f)(1) of the Illinois Rules of Professional Conduct; bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct; using means to represent a client that have no substantial purpose

33

other than to embarrass, delay, or burden a third person in violation of Rule 4.4 of the Illinois Rules of Professional Conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

Respondent admits that on January 7, 1994, he represented Tracy Greenwood, successor administrator of the estate of John Gilbert Greenwood in the consolidated cases of Estate of Greenwood 84 P 62, and Greenwood V. NIGAS 84 L 179, in the Circuit Court of LaSalle County. Respondent further admits that on January 7, 1994 he filed a motion to substitute judges for cause in case numbers 84 P 62 and 84 L 179, in which he alleged that Judge Stephen White's decisions were racially motivated. Respondent also admits that on January 7, 1994 Judge William R. Banich conducted a bearing on the motion to substitute Judge White for cause, and denied the motion. Respondent denies the remainder of the allegations contained in these counts.

Evidence

Associate Judge William R. Banich of the 13th Judicial District testified that in January of 1994 he was assigned to preside over a motion for change of judge filed by Respondent in the Estate of John Greenwood versus Northern Illinois Gas Company Judge Banich testified that he came in from the North courthouse to bear the motion. As Judge Banich recalled, the motion alleged Judge

34

White had made some comments regarding the administrator of the estate which had some racial overtones. Judge Banich also recalled that the motion alleged Judge White did not have sufficient legal knowledge to hear the case. Respondent based this assertion on certain issues in the case that Judge White had ruled upon being reversed on interlocutory appeal. Judge Banich heard oral arguments and denied the motion. (Ev. Dep.7- 8, 37)

Steven White testified that he is a judge in the Twelfth Judicial Circuit in Will County. In December of-1 993 Judge White presided over the cases of Estate of Greenwood and Greenwood versus NIGAS by assignment of the Supreme Court. Respondent represented Tracy Greenwood in those proceedings, Judge White testified he has no personal or business relationship with NIGAS aside from paying his gas bill. Judge White further testified that there was nothing that prevented him from being fair and impartial in rendering opinions or decisions in the case and that none of the decision he made in the cases were based upon Tracey Greenwood's race. Judge White has completed the Greenwood V. NIGAS case but he is still assigned to the Estate of Greenwood case. Tracy Greenwood is the administrator of the estate and Respondent continues to represent the estate. Judge White acknowledged that he removed Tracy Greenwood as the administrator of the estate and that Respondent appealed that ruling to the Third District Appellate Court which ruled in Greenwood's favor based upon a lack of proper notice. tr. 284-285, 287-288, 290, 292, Res. Ex.3- A)

Kent Ayers testified he is an attorney who practices in Joliet, Illinois and that he represents Northern Illinois Gas ("NIGAS"). Ayers testified he was involved in the case of Tracy Greenwood v. NIGAS. The verdict in the trial court litigation was, as Ayers recalls, $330,000.00 against NIGAS which was reduced by finding Greenwood 90 percent contributorily negligent so

35

Greenwood was awarded $33,000.00. (Tr. 164-165)

Ayers does not know of any relationship Judge White had with NIGAS on or before December 10, 1993. Respondent did not provide Ayers with any evidence regarding the alleged relationship between Judge White and NIGAS though Avers conducted his own investigation because he was concerned a conflict might exist. Ayers' investigation revealed no relationship between Judge White and NIGAS. Ayers further testified that he did not hear Judge White make any racial slurs on or off the record regarding Tracey Greenwood and added that he has never heard anyone other than Respondent accuse Judge White of making such comments in any context (Tr. 166-167,171).

Jack Ardaugh testified he is an attorney practicing with Kent Ayers and he was involved in the Greenwood v. NIGAS case. Ardaugh, like Ayers, knows of no personal or business relationship that Judge White had with NIGAS though he did not personally decide the matter. Ardaugh further testified that respondent never provided him with any details beyond the information included in his pleadings regarding Judge White's alleged personal relationship with NIGAS. (Tr. 179-180, 195-196, Admin. Ex. 52).

Ardaugh described Respondent's motion practice in the NIGAS case as including numerous motions for change of judge that delayed and obstructed the procedure. Collectively Ardaugh believes there were twelve judges assigned to the Greenwood cases. To the best of Ardaugh's recollection NIGAS did not file any motions to substitute judges. Ardaugh testified, however, that based on his experiences as an attorney some Respondent's motions had a rational basis but others were lacking foundation in either law or fact. In Ardaugh's opinion the delays

caused by these motions cost NIGAS in excess of tens of thousands of dollars. As an example of Respondent's

36

motion practice Ardaugh recalled a letter Respondent sent him and Judge White wherein Respondent stated he could not appear in Will County for a hearing on a temporary restraining order because Judge White was not assigned to Will County but rather, was assigned to LaSalle County. (Tr. 175-176, 184, 187, 189-190, 196-197, 199-203, Admin. Ex. 21a and 21b)

Ardaugh recalled appearing before Judge White on January 7, 1994, in the Greenwood vs. NIGAS matter but had no recollection of Judge White making any racial slurs with regard to Tracy Greenwood at that or any other time. Ardaugh acknowledged, however, that be was not with Judge White every minute he was in the courtroom. Ardaugh testified he was contacted by and spoke to an individual from the Judicial Inquiry Board regarding Respondent's allegations in reference to Judge White and alleged racial slurs made against Tracy Greenwood. Ardaugh informed the individual from the Judicial Inquiry Board that he did not hear Judge White utter any such comments. tr. 178-179, Admin. Ex. 52)

Ardaugh testified he was familiar with allegations by Respondent regarding the signature of Kent Ayers being affixed to a brief by facsimile. The appellate court ruled against Respondent on that issue. Respondent then raised the issue on a motion for a supervisory order before the Illinois Supreme Court, Ardaugh expended 6.7 hours in defense of the motion. (Tr. 177-178, 191, 193, Admin. Ex. 30)

Judge Banich testified he never had any conversations with Judge Carter regarding

Respondent's making motions for substitution though he believes they may have spoken about Respondent's lawsuit filed against Judge Carter. Judge Banich testified that he has no recollection of Judge Carter being offended at being named as a defendant in that case. Judge Banich recalled a discussion regarding whether there should be a rule for motions for substitution of judge and

37

remembered Respondent was a peripheral subject of the conversation. Judge Banich denied that Respondent was the reason for the adoption of the rule. The rule was, however, the reason a hearing regarding the motion for substitution was held so quickly in the Greenwood v. NIGAS case. (By. Pep. 40-43, By. Dep. 50)

John Betts testified he had observed Judge White in court prior to this time in the Estate of Greenwood case and that in that case Judge White held hearings without notice, held hearings outside LaSalle county and made disparaging remarks about African-American and Hispanic persons. Betts testified that based upon his observations Judge White's behavior in the Greenwood matter was unsatisfactory, Specifically Betts testified Judge White made comments suggesting he was afraid to be on the streets of Joliet due to the African-Americans and Hispanics who reside there. Betts further testified that Judge White wondered aloud where the Greenwoods could read and write Betts testified that at the time these statements whether made the litigants and some spectators were present, but later testified that he never said the litigants had been present. Betts did not believe Respondent was

present when these remarks were allegedly made. (Tr. 770-771, 776-778)

Findings of Fact and Conclusions of Law

We find no evidence supporting Respondent's contention that Judge White made racially motivated comments directed toward Tracey Greenwood and, therefore, find that Respondent's Motion for Change of Judge from Judge White to have been a delay tactic. We further find Respondent's letter to the Judicial Inquiry Board to have been for the purpose of harassing Judge White.

Count IV

We find the Administrator proved by clear and convincing evidence that the

38

Respondent violated the following Illinois Rules of Professional Conduct: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(f)(1); bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1; using means to represent a client that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4; and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5)

Count VI

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following rules of the Illinois Rules of Professional Conduct: asserting a position on behalf of a client that serves merely to harass or maliciously injure in violation of Rule 1.2(f)(1); making a statement the

lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a); and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5).

Count X

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct: making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a); engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Count V

Complaint

On June 18, 1991. Respondent and attorney Kevin Kelly filed their appearances in the Circuit Court of LaSalle County on behalf of Donna Fegley in Fegley vs. Johnson, 90 F 198. On June 24, 1991, Kelly filed a verified petition for change of venue, alleging that Judge H. Chris Ryan was prejudiced against him. The petition was granted on June 26, 1991, and the case was reassigned to Judge Cynthia M. Raccuglia.

39

On November 5, 1991, Respondent filed a motion to continue and a motion to disqualify Judge Raccuglia, alleging that she was prejudiced in favor of

his opponents. Respondent charged that Judge Raccuglia had become "an advocate" on behalf of opposing counsel, had advanced the date of the pretrial and was unwilling to stay the proceedings in the trial process in order to afford his client the opportunity to utilize the appellate process. Judge Raccuglia denied both motions on November 15, 1991.

On February 24, 1992, Respondent filed a memorandum in support of his November 5, 1991 motion to disqualify. In that memorandum Respondent stated that Judge Raccuglia's father had a referral agreement with counsel for Johnson. He also produced a 1988 letter that Judge Raccuglia had written to Respondent while she was a practicing attorney. In the letter. Judge Raccuglia asked for clarification of an issue, and mentioned the possibility of filing a Section 2-611 motion against Respondent for pleading untrue allegations without reasonable cause. Based on the motion Judge Raccuglia excused herself and the case was reassigned to Judge Robed H. Adcock. On October 7, 1993, Judge Adcock recused himself. On October 12, 1993, Judge Howard Wampler was assigned to the case, Judge Wampler recused himself on October 18, 1993 and the case was reassigned to Judge Charles E. Marshall. Respondent then filed a motion to quash service of process. On November 23, 1993 Judge Marshall denied Respondent's motion to quash and ruled that proper service had been made on Respondent's client, Donna Fegley. On that same day, Respondent filed a motion to substitute judges as a matter of right. Judge Marshall denied Respondent's motion. Respondent also filed that day a petition for substitution of judges for cause, alleging that opposing counsel had participated in a case referral agreement

with Judge Marshall for several years Judge James Lanuti conducted a hearing on this petition instanter. Judge Lanuti determined that

40

Respondent's allegations were "untrue and made without any basis in fact or law," and denied Respondent's motion. Respondent's allegations concerned the judge's qualification or integrity because they indicated that Judge Marshall was biased in favor of Respondent's opponents, that he maintained a relationship with opposing counsel which undermined his impartiality and tat he could not fairly administer justice in the proceedings. Respondent's statements which indicated a lack of integrity by Judge Marshall were false. Respondent's repeated motions and petitions to disqualify judges were filed merely to harass or maliciously injure the judges against whom there were filed, and Respondent had no basis for doing so and that they were frivolous.

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure in violation of Rule 1.2(f)(l) of the Illinois Rules of Professional Conduct; making a statement of material fact or law to a tribunal which a lawyer knows or reasonably should know is false, in violation of Rule 3.3(a(l)) of the Illinois Rules of Professional Conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and engaging in conduct that is prejudicial to

the administration of justice. in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.
Answer

Answer

Respondent admits that on June 18, 1991, he and Kevin Kelly filed their appearances in the Circuit Court of LaSalle County on behalf of Donna Fegley in Fegley v Johnson, 90 F 198. Respondent further admits that on June 24, 1991, Kelly filed a verified petition for change of venue,

alleging that Judge H. Chris Ryan was prejudiced against him. The petition was granted and the case was reassigned to Judge Cynthia M. Raccuglia. Respondent further admits he filed a motion for continuance and a motion to disqualify Judge Raccuglia. Respondent further admits that on February 24, 1992. he filed a memorandum in support of his motion to disqualify. Respondent admits Judge Raccuglia recused herself based on Respondents motion and that the case was reassigned to Judge Robed Adcock who, on October 7, 1993, recused himself. Respondent further admits that on October 12, 1993, Judge Howard Wampler was assigned to the case and on October 18, 1993 Judge Wampler recused himself and the case was reassigned to Judge Charles E. Marshall. Respondent admits filing a motion to quash service of process. Respondent admits Judge Marshall denied Respondent's motion to quash. Respondent denies all other allegations contained in this count.

Evidence

Cynthia Raccuglia testified she is a circuit judge in the 13th Judicial Circuit. In June of 1991 Judge Raccuglia was assigned to family law court where she

presided over the custody matter of Fegley v. Johnson. Respondent represented Fegley in that matter. Respondent testified that while Donna Fegley was arrested and her child was taken from her. Fegley did not want Judge Raccuglia to hear her case. In February of 1992 Judge Raccuglia was presented with a petition for disqualification and a memorandum in support of this motion by Respondent. The petition asserted Judge Raccuglia was biased in favor of Bradley Johnson due to an alleged referral relationship between Raccuglia's father's firm, where Judge Raccuglia once practiced, and Melvin Hoffman, Counsel for Bradley Johnson. Judge Raccuglia initially denied this allegation but testified the motion was well founded in law. Ultimately, however, Judge Raccuglia recused herself from the

42

case though she did not feel she was prejudiced. Judge Raccuglia refused to vacate her prior rulings in the case. In her final order, Judge Raccuglia transferred custody of the child from the mother (Donna Fegley) to the father. Raccuglia characterized Respondent's representation of Fegley as vigorous. Fegley filed an appeal and Judge Raccuglia's ruling was reversed. (Tr. 216-220,227-228, 234-235, 236-237, 981, Admin. Ex. 41)

Charles E. Marshall testified he was a circuit judge from late September of 1993 until December 1994. In October of 1993 Marshall was assigned to the 13th Judicial Circuit where he presided over the Fegley v. Johnson case. On November 23, 1993, Judge Marshall entered an order denying Respondent's motion to quash service because he found the court had personal jurisdiction over Donna Fegley. Judge Marshall also denied Respondent's motion for

substitution of judge as matter of right. Marshall based this ruling on the fact that he had already made a ruling in the case (the motion to quash service) on November 24, 1993. Judge Marshall had no recollection of a statutory provision which provided that in the event of the filing of a special and limited appearance, and the denial of such appearance, that parties were not prohibited from ruling any other matter or motion. (23 8-242, 245, 252, Admin. Ex. 41, 55)

Respondent filed a motion to substitute Judge Marshall for cause alleging he could not be fair or impartial because Judge Marshall and opposing counsel (Kelvin Hoffman) allegedly had a referral agreement for several years. Judge Marshall testified that no such agreement existed and that there was no reason that he could not be fair and impartial in presiding over the Fegley v. Johnson matter. Judge Marshall had no recollection of referring any cases to Hoffman in any formal matter though he did give the names of attorneys in Ottawa to clients looking for representation m areas he did not practice in. Marshall received no compensation for such referrals. Judge Marshall is certain

43

he gave Hoffman's name to more than one client as a matter of courtesy. Judge Marshall denied the motion for substitution although he admitted that Illinois Court rules prohibit a judge from ruling on motions to change judge for cause when the judge in question is himself. Judge Marshall testified that he did not believe the motion for substitution of judge for cause had any basis. tr. 242-243, 245,253-255, Admin. Ex. 41, 252)

Judge Marshall testified there was a hearing on the motion to recuse before Judge Lanuti who denied

the request. The case was then referred back to Judge Marshall who presided over the matter. Judge Marshall has no recollection of making any finding of delay in a written order. (Tr. 245-246, 253, 256-258)

James Lanuti is presiding judge of the family law division in LaSalle County. In November of 1993 Judge Lanuti was assigned by Judge Carter (the chief judge) to hear a motion to substitute judge in the Fegley v Johnson case. Judge Lanuti testified that before he ruled on the motion to recuse he denied Respondent's request for a continuance of the hearing because Respondent had filed the motion without notice and then asked for time to do discovery. Present at the hearing was Judge Lanuti, Respondent and Hoffman (opposing counsel). As Judge Lanuti recalled Respondent's evidence consisted of testimony that Hoffman had worked for an attorney in the 1970s who had a referral agreement with Judge Marshall. Hoffman worked on some of these cases but had no financial interest in the cases and did not have work with Judge Marshall since the 1970s. Judge Lanuti ruled against the Respondent based on a lack of evidence. Judge Lanuti believes this was about 2:30 p.m. of the day the motion was filed and the same day Judge Marshall denied such motion. Judge Lanuti felt that Respondent should have had some preliminary showing of what the evidence was before filing the motion. Judge Lanuti testified that there might have been a legal basis

for this motion if Respondent had proven the facts he alleged. Respondent testified that Donna Fegley authorized him to file all the motions. (ft. 261-264, 267-268, 271,273-276,280-281,980, Admin. Ex. 41)

Judge Lanuti would have been more sympathetic to Respondent's motion to continue had he felt Respondent presented any evidence in support of his allegations. In Judge Lanuti's opinion Respondent failed to comply with the Rules of Civil Procedure to the extent that they require a lawyer do a preliminary investigation to determine whether there is a basis for bringing a motion. Judge Lanuti never filed a complaint with the ARDC in reference to Respondent. (Tr. 265,267,277-279)

Findings of Fact and Conclusions of Law

We find that Respondent's repeated motions for change of judge to be frivolous and had no basis in law or fact. We believe Respondent's sole purpose for filing these motions was to gain additional time to prepare his case. Furthermore the motions for change of judge caused great logistical difficulties as the Thirteenth judicial Circuit is spread over a large geographical area and such changes require an excessive amount of dashing to and fro. Therefore we can only view Respondent's repeated motions for change of judge as an obstruction of justice.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct: asserting a position on behalf of a client that serves merely to harass or maliciously injure another in violation of Rule 1.2(f)(1); making a statement of material factor law to a tribunal which a lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1); making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity Concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation

of Rule 8.2(a); and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5).

45

Count VII

Complaint

In 1993, Respondent represented Martin L. Gibbs in People v. Gibbs 93 CF 69, 93 CM 401,93 TR 2346,93 TR 2347 and 93 TR 2348 in the Circuit Court of Bureau County. On October 19, 1993, following two motions for change of judges, Chief Judge Robert Carter reassigned these matters to Judge Charles B. Marshall. On October 26, 1993, Respondent filed a motion to vacate the order of assignment. Respondent based his argument on the claim that the assignment bad not been made pursuant to the "usual rotation system." Judge Carter denied Respondent's motion on October 27, 1993. In his October 27, 1993 order denying Respondent's motion, Judge Carter held that "THE MOTION TO VACATE ORDER OF ASSIGNMENT are (sic) frivolous, patently without merit, and an improper attempt to interfere with the assignment authority of the Chief Judge." On October 29, 1993, Respondent filed a motion to reconsider, alleging that Judge Carter treated Gibbs "differently from all other parties...and denied the defendant due process and equal protection of the law, in violation of the state and federal constitution," Respondent further alleged that the language used by Judge Carter in denying the October 26, 1993 motion was "unduly harsh and uncivil." Respondent also stated that Judge Carter was prejudiced against him. On November 2, 1993, Judge Carter denied the motion to reconsider.

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity

46

concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

47

Answer

Respondent admits that on October 26, 1993. he filed a motion to vacate the order of assignment and that order was denied. Respondent further admits filing a motion to reconsider and that the motion was denied. Respondent denies all other allegations contained in this count.

Evidence

Judge Carter, Chief Judge of the 13th Judicial Circuit testified he assigned Judge Marshall to hear the consolidated case of People v. Gibbs. The cases were: a driving under the influence charge; a misdemeanor; and a felony. Judge Carter consolidated these cases for purposes of judicial economy. Respondent filed a motion to vacate that order because he and Gibbs did not want one judge hearing all three cases. Respondent testified that Judge Carter had, at that time, a policy of assigning cases such as these to separate judges. Judge

Carter denied Respondent's motion to vacate the order of assignment. Judge Marshall recused himself from the matters on December 30. (Tr. 403-405, 509, 982-983, Admin. Ex. 46, 47 Res. Ex. 11-A)

Judge Carter testified that he has no usual rotation of assignment of judges when he assigns judges outside a division or outside the county. The judges Judge Carter assigns are not all in one location, they are in three different counties. In making his assignments Judge Carter takes into consideration the various locations of the judges. Judge Carter looks at the case load of potential judges and determines who is available in making such assignments. Judge Carter further testified that he does not use the same method of rotation as chief judge as he used when he was presiding judge of the associate division. Judge Carter testified that there is no statutory requirement or Illinois Supreme Court Rule requirement that, when a motion for substitution of judge is received

48

for cause an assignment on that motion must to be made immediately. Judge Carter acknowledged that there is no requirement that such a motion be heard on a certain day. Judge Carter testified that while there is no prohibition in the statutes against filing successive motions to substitute judges there is a prohibition on filing frivolous motions. Judge Carter testified that when he is presented with a motion for substitution as a matter of right he sometimes does not read it but he does investigate motions for substitution for cause. (Fr. 405,409-410, 433435,437.513-514)

Judge Carter denied that he treated Gibbs differently than other parties as alleged in Respondent's motion to reconsider the order of

assignment. Judge Carter testified he did not know Gibbs and did not have any relationship with him. (Tr. 406, 408-409 Admin. Ex.48).

Judge Carter denies that in denying his motion to vacate he used language which was unduly harsh and uncivil, Specifically Judge Carter stated that he did not run against Respondent for the same judicial slot as Respondent alleged. Rather, Respondent lost in the primary and Judge Carter prevailed over the individual Respondent lost to in that primary election. Carter testified that the case was long decided and that he is not prohibited from hearing cases in which Respondent is involved. Tr. 411412, 438441, Admin. Ex. 48)

Findings of Fact and Conclusions of Law

We find Respondent filed the motion to vacate the order of assignment in the Gibbs matter purely for purposes of aggravating Judge Carter and that the motion had no basis in law or fact and Respondent knew there was no basis in law or fact.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct asserting a position on behalf of a client that serves merely to harass or maliciously injure another in violation of Rule 1.2(f)(1); making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer,

or public legal officer, in violation of Rule 8.2(a); and engaging in conduct that Is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5).

Count VIII

Complaint

On August 15, 1991, Respondent filed a special and limited appearance in Estate of Glen Serby 89 P 343, in the Circuit Court of LaSalle County. On March 2, 1992, Judge James A. Lanuti ordered that a citation be issued directing John Betts to appear in Court in that case to show cause why Betts should not turn over assets belonging to the Serby estate. On May 18, 1992, Respondent petitioned for a change of venue as a matter of right. Judge Lanuti granted the motion. The case was reassigned to Judge Cynthia M. Raccuglia on June 4, 1992. On April 6, 1993, Judge Raccuglia recused herself sua sponte. The case was reassigned to Judge Stephen White. On August 12, 1994, Respondent's motion to quash service on the citation was denied. Respondent then filed a motion to change judges for cause, alleging that Judge White was biased because Respondent had accused White of making racial slurs in another case. Chief Judge Carter assigned Judge William Banich to hear the motion to change judges. On the same day, Respondent petitioned to change judges for cause, alleging that Banich also was biased because Banich had previously denied a petition for change of judges for cause in another matter involving Judge White. Chief Judge Carter assigned Judge Cynthia Raccuglia to decide the motion to disqualify Judge Banich. Respondent then filed a motion to disqualify Judge Raccuglia, arguing that she had previously recused herself in the same case. Judge Howard C. Ryan, Jr. was then assigned to hear the motion to disqualify Judge Raccuglia. On August 15, 1994, Respondent sent a facsimile to Chief Judge Carter with what Respondent referred to as "suggestions"

about procedures for addressing motion to change judges. Respondent

50

alleged therein that Judge Carter was attempting to "manipulate the outcome of cases by use of the assignment power he claims to have because of his office."

On August 19, 1994, Respondent filed a motion to disqualify Judge Ryan, arguing that Judge Lanuti had tainted Judge Ryan and other members of the "judicial pool" by speaking with them about John Bet. On August 19, 1994, Judge Carter assigned Judge Paul Root to hear the motions against Judges White, Banich, Raccuglia and Ryan. On August 26, 1994, Respondent petitioned to change judges for cause, alleging that Judge Root could not be impartial. At 9:58 am. that same day Respondent sent a facsimile to Judge Root, informing him that Respondent would be late appearing in the case because he had a conflicting court appearance in Chicago. Respondent also instructed the judge not to enter a default judgment against him.

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct; making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. adjudicative officer, or public legal officer, in violation

of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

Answer

Respondent admits that on March 2, 1992, Judge James A. Lanuti ordered that a citation be

51

issued directing John Betts to appear in court in 89 P 353 to show cause why Betts should not turnover assets belonging to the Serbia estate. Respondent further admits the case was reassigned to Judge Cynthia Raccuglia on June 4, 1992 and that on April 6, 1993 Judge Raccuglia recused herself sua sponte. Respondent further admits that on August 19, 1994, he filed a motion to disqualify Judge Ryan arguing that Judge Lanuti had tainted Judge Ryan. Respondent admits Judge Carter assigned Judge Root to hear the motions against Judges White, Banich, Raccuglia and Ryan. Respondent denies all other allegations contained in this count.

Evidence

John Betts testified that Glen Serby, his stepfather, died in February of 1988 and his mother died in May of 1989. The estate of Glen Serby was opened when Betts' mother died. Betts testified that in approximately 1990 his stepsister (Sharon Becker) had a citation issued directing Betts to return property belonging to the Serby estate. Becker was represented by William Surin, from Craig Armstrong's office, Betts testified that at the time the citation was filed judges within the Thirteenth Circuit had animosity toward him because he caused a judge to resign his post in disgrace for taking a bribe. Betts testified that Judge

Zwanzig asked him to back off and not pursue having him removed. Betts testified he informed Judge Zwanzig he would not do anything and there was nothing Judge Zwanzig could do to him. Betts testified Judge Zwanzig told him he could do things to Respondent and he could get everyone else to do so also. Betts alleged that after Judge Zwanzig's resignation he -"couldn't have-a traffic ticket heard fairly." Betts further testified that during this period he was in the process of getting all the judges audited by the IRS for failure to report their full income. Betts testified he sent letters to every judge in the circuit about the IRS audits. Betts testified that he was sure he had evidence to support his charges. Tr. 703-706, 709-71 1, 895-896)

52

Betts testified that when he found the citation to return property was assigned to Judge Lanuti he called Respondent and informed him he was afraid to appear before Judge Lanuti because he did not feel Judge Lanuti could be him and impartial in any proceeding connected to Betts. Betts based this on the fact that Judge Lanuti testified for the Administrator in ARDC proceedings involving Betts. Betts further alleged that Judge Lanuti tainted the judicial pool by speaking to them about Betts. Betts acknowledged, however. he was not present during any of these alleged conversations with other judges. Betts further asserted Judge Lanuti did this because Respondent on Betts' advice, reported Judge Lanuti's uncle, Joseph Lanuti, to the ARDC. Betts testified Respondent filed a motion for substitution of Judge Lanuti for cause filed on Betts' behalf on May 18, 1992. Betts noted Respondent reflected Betts' concerns in the motion to remove Judge

Lanuti. Betts testified that he signed the verification of the Motion for Change of Judge for Cause and that everything contained in it was true. The motion was allowed as a Motion for Change of Venue as a matter of Right on May 19, 1992. Judge Lanuti based this ruling on the fact that he had made no substantive rulings in the case. Betts testified he does not know why Judge Lanuti converted his motion into a motion as a matter of right but believes he did so in order to deprive him of the right to the automatic motion for substitution. Betts testified, however, that it is the custom in LaSalle County to treat an initial motion for substitution of judge as a motion for substitution as a matter of right. Respondent testified he never filed a motion requesting the order changing the judge be properly characterized, Tr. 714,716 6,727-728,732; 735, 741-742 747,- 896, Admin. Ex. 50)

In addition to the allegations outlined in the motion to recuse, Betts testified that in 1989 he had two cases set for hearing before Judge Lanuti in the criminal courts but was unable to attend. Betts informed the state's attorney's office that he was unable to attend and asked to have the matters

53

continued. Judge Lanuti, according to Betts, called that case, the state's attorney denied having spoken to Betts and a criminal contempt citation was issued against Betts. Betts asserted this is something that is simply not done. In addition Betts recounted an appearance before Judge Lanuti's in February of 1989 when, he alleged, Judge Lanuti singled him out and "almost physically" threw him out of the courtroom because he had failed to pay his 1989 Attorney Registration dues. Betts testified Judge Lanuti received campaign contributions

from Craig Armstrong. the attorney representing the plaintiff in the case. (Tr. 735, 737, 739-740)

Judge Raccuglia was appointed to preside in the Estate of Glen Serby on June 4, 1992 and presided until about April 6, 1993 when she recused herself. Judge Raccuglia testified she recused herself because she had words with Betts when he delivered a motion to her house. Betts characterized this conversation as unfriendly though no threats were made to either himself or to Judge Raccuglia. (Tr. 750, 753, 757, Admin. Ex. 50)

In 1993 Judge Steven White was assigned to the Estate of Glen Serby case. On August 12, 1994, Respondent filed a motion to quash service and a motion to substitute Judge White for cause. The motion alleged Judge White had made disparaging racial comments about one of Betts' former clients in the Greenwood v NIGAS case. The motion further alleged that Respondent had reported these alleged racial comments to the Judicial Inquiry Board and that this too would serve to prejudice Judge White though in testimony Betts was unable to recall why he desired a change from Judge White. Betts testified that Judge-White came in, saw the motion and contacted Judge Carter so that it would be assigned to be heard. Also on August 12, 1994, Chief Judge Robert Carter assigned the case to Judge Banich for purposes of an immediate hearing on the motion for change of judge and Betts filed a handwritten motion for Judge Banich to recuse himself Betts testified the motion was

handwritten because Judge Carter had insisted the motion be heard immediately leaving him no time to type it. Betts also filed a motion requesting leave to file

an expanded motion for change of judge from Judge Banich due to the brief period before the motion was scheduled to be heard. Betts believes Judge Carter called Judge Banich right away because it was less than 15 minuets later that he appeared to hear the motion. Betts testified the request for additional time to file an expanded motion was not heard. Bet testified he did not want Judge Banich to rule immediately. Betts also alleged he had a case wherein he and Judge Banich were adversaries and Judge Banich entered into an ex. parte motion. (Tr. 285-286, 414, 760, 765-766, 785-787, 791-795, 797, Ev. Dep. 10-11, Admin. Ex. 50)

Judge Banich testified he never had a business relationship with the law firm of Herbolsheimer and Duncan as was alleged in the motion other than being employed by a law firm that had an agreement to share and jointly maintain library facilities with the Herbolsheimer firm, a relationship he maintained as a sole practitioner. This relationship ended when Judge Banich moved his office out of that building in 1987. Judge Banich testified that he was never referred cases by Herbolsheimer and Duncan and he does not believe anyone in his firm was referred cases by the firm. Judge Banich believes there were situations where he and the Herbolsheimer firm had clients with similar interests involved in the same case but could not recall having worked together with them. Judge Banich continued a library sharing arrangement with the firm after he became a sole practitioner. Respondent farther made reference, in his motion, to Judge Banich's ruling in the Greenwood v. NIGAS motion to substitute judge for cause. Judge Banich testified that he did not connect the Greenwood and Serby cases in his mind and that there was no reason he could not administer justice

fairly in the Serby case. Judge Banich testified Respondent currently represents

55

parties before him and that he has never made a complaint to the ARDC against Respondent. (By. Dep. 11-15, 17,20,26-27, 29-30, Admin. Ev. Dep. Ex. 2)

In the motion for change from Judge Banich, Betts raised issues regarding Judge Carter's administrative rules. The nature of these questions was that they did not allow a person time to properly prepare and file documents. Judge Carter testified that he found Respondent's motions to be frivolous, without merit and improper. Judge Carter noted Respondent did not attach any legal precedent to his motion in support of his allegations that Judge Carter denied the defendant due process and equal protection of the law in violation of the state and federal constitutions. Judge Carter denied that he was trying to manipulate the outcome of cases by the use of the assignment power. Judge Carter assigned Judges Banich and Raccuglia to hear the motions because they were available and his philosophy is to hear such motions with dispatch in order that they not be used as "cheap" forms of continuances. Judge Carter testified that when a motion for substitution is filed and brought to his attention he immediately enters an order assigning that motion to another judge for hearing. There is, however, no statute or supreme court rule requiring he do so immediately. The purpose in Carter's assigning the motion to a judge immediately is to have a hearing on that motion as quickly as possible, potentially even that day. The reason for this is to avoid continuances. (Tr. 412, 414, 416, 425. 485-489, 802, Res. Ex. 10A)

Judge Carter then assigned the case to Judge Raccuglia and a motion for change of judge for cause was filed by Respondent. The motion alleged that Judge Raccuglia had "fixed" another case. The motion further asserted that because Judge Raccuglia had already been a judge in the case and had recused herself she should not hear this motion. Judge Raccuglia did not recuse herself from considering the motion of change of judge because she felt she could be unbiased in hearing the

56

motion. (Tr. 222,224-225,414, 805, 806, Admin. Ex. 50)

Judge Raccuglia testified she presided over other cases wherein Respondent was counsel in the civil division and continues to preside in cases in the criminal division in which Respondent is representing parties and has never had problems with Respondent in those cases. Judge Raccuglia never formally made a complaint to the ARDC about Respondent. Judge Raccuglia testified that she has, from time to time and very rarely, bad litigants request a change of judge from her court to another courtroom. (Tr. 226-227,229)

The motion to remove Judge Raccuglia was assigned to Judge Ryan and set for hearing the following Monday. Respondent filed a motion for change of judge from Judge Ryan for cause on August 19, 1994. The purpose for this motion, Betts testified, was that Judge Lanuti, who he alleged to be a close friend to Judge Ryan. testified at the ARDC hearing regarding Betts and had spoken to other judges about Betts' reputation. Betts testified he based this belief on his seeing Judge Lanuti and Judge Ryan together often and because he had seen law books in front of Judge Ryan that he had seen in front of Judge Lanuti at an

earlier date. (Tr. 417-419, 815, 817, 819, 822, Admin. Ex. 50)

Judge Howard Ryan testified that he is assigned to the criminal division of the Thirteenth Judicial Circuit in August of 1994 when Judge Carter assigned him to the Estate of Serby for the purpose of hearing a motion to substitute Judge Raccuglia. Judge Ryan believes he was the third or fourth judge assigned to the Serby case. Judge Ryan does not recall conducting a hearing on the motion because Respondent filed a motion for change from Judge Ryan for cause. The motion alleged that Judge Lanuti had tainted the judicial pool by speaking with Judge Ryan about John Betts. Judge Ryan testified the only conversation he might have had with Judge Lanuti regarding Betts would have been to mention that he had been disbarred. Judge Ryan testified there was no

reason he could not be fair and impartial in deciding the motion for change of judge. Judge Ryan testified that it is not unheard of for parties before him to request a change of judge from him and that it has occurred approximately twice. Judge Ryan stated he did not file a complaint regarding Respondent with the ARDC nor did he enter any sanction order against Respondent in the Serby matter. Judge Ryan testified Respondent has had numerous cases before him in the criminal division and there is no reason he would not hear a case wherein Respondent represented a party. Judge Ryan testified he is uncertain whether it is improper to file multiple motions for change of judge and he does not know if he would hold a person in contempt for doing so and he is unaware of any rulings on such an issue. (Tr. 383-392, 396, 398, 416)

The Estate of Glenn Serby case was then assigned to Judge Root and a motion for change from Judge Root was filed on August 26, 1994. Judge Root read the motions to disqualify himself and the motion to disqualify Judge White. Judge Root testified that it was not his understanding that he needed to wait until the motion to substitute himself was ruled upon before he ruled on the motion to substitute Judge White. Judge Root testified he was uncertain whether the notion to substitute him was assigned to another judge at that time. Judge Root testified that Respondent's motion to disqualify himself was based upon an alleged radio station controversy. Judge Root's wife owns a one-half interest in the corporation that owns WJDK in Morris, Illinois, the radio station referred to by Respondent. Judge Root himself has no interest in WJDK and was never informed of any - aspects -of the radio station operations. Judge Root had no knowledge that Betts ever worked at WJDK as was alleged in the motion. Betts testified he did not file an EEOC action or any lawsuits in reference to his firing from WJDK because he was an independent contractor. Additionally, Betts noted in his testimony that, Judge Root had recused himself from a criminal proceeding pending in

58

La Salle county against Betts claiming that he could not be impartial- (Tr. 306-308, 310, 315-316, 417418, 823, 825, 896. Admin. Ex. 50)

Judge Root held a hearing and denied the motion far change from Judge White and declared the motions for change following that motion to moot There was no hearing on the motion for change from Judge Raccuglia or most of the other motions,

according to Betts. Respondent represented Betts at that hearing. Judge Root testified he found no evidence to support Respondent's motion for substitution of Judge White and, in fact, Respondent offered no evidence. A motion to vacate Judge Root's order was filed and denied. Judge Root testified that there is no reason he would not be fair and impartial in deciding motions to disqualify the judge and that he was in fact fair and impartial. Judge Root testified he did not enter any sanction orders in connection with the motion to substitute Judge White nor did he make a complaint to the ARDC in the matter. (Tr. 257, 311-313, 319, 419, 806, Admin Ex. 50)

Judge Carter testified that Respondent's multiple motions to change judges was very disruptive to his office. Judge Carter went on to state that there are only 12 judges in the circuit. Twice Carter testified that Five motions to change judges in a short period of time is unusual. Tr. 419, 421,413,426)

Judge Root was unable to recall whether Respondent provided a memorandum on this issue, though he identified a letter from Respondent in which Respondent informed him he was sending a memo: (317, 318; Admin. Ex. 50)

Judge Carter testified that during the pendency of the Serby matter Craig Armstrong was his best friend. Judge Carter testified that he believes he may have heard agreed orders on issue wherein Armstrong represented a party. Judge Carter noted that when he took the bench there was no

59

specific rule on how long a judge had to wait to hear cases from his or her former firm' Judge Carter testified that Surin (who represented Betts' stepsister) was hired

by his firm shortly before he took the bench in 1979. Judge Carter acknowledged that while he did not hear cases involving Surin or Armstrong he did assign these cases to other judges. (Tr. 443-446,492, 496)

Judge Carter testified that in his opinion the requirement that before a pleading is filed there must be an investigation into the meritoriousness of the facts and law supporting the motion applies to substitution of judges. Judge Carter testified that there are circumstances under which successive motions for change of judge would be inappropriate. Judge Carter further testified that the language in the motions Respondent filed for change of judge were filled with accusations and included words "like revenge" about Judge Ryan's father, a retired Illinois Supreme Court Justice. Judge Carter testified language such as this has a disruptive impact on the administration of justice. Judge Carter further testified Respondent's motions for change of judge were very disruptive and such motions have a negative impact on the reputation of the legal community and the community general about the way the court system operates. Judge Carter had no independent knowledge as to whether the motions in the Serby case were found to be frivolous. Judge Carter testified that he does not hear any substantive cases where the Respondent or Betts are involved. Additionally Judge Carter has not had a substantive conversation with Respondent since 1988. Judge Carter did not make a complaint to the ARDC regarding Respondent's conduct in the Serby case but did direct Diane Robinson to send the ARDC copies of- motions filed by Respondent. Judge Carter testified he has not sent motions by other attorneys for change of judge to the ARDC. Judge Carter testified that because there

was a lawsuit in which he was named which was connected to a judicial race and that suit was brought by Respondent he was concerned that if he heard cases involving Respondent it

could appear that any decision he made might appear to be influenced by that suit. Betts classified his relationship with Judge Carter as strained due to an adversarial dealing he and Judge Carter had in approximately 1974 and because he contested Judge Carter's election to the bench. Judge Carter testified that canon 2 of the Judicial Code of Conduct is a factor in determining whether to hear cases involving certain individuals. (Tr. 447,451-452,474,492-495,497,502-503 505, 510, 809)

David Carey, the Clerk of the Court for LaSalle County testified he is somewhat familiar with the motions Respondent filed in Greenwood v. NIGAS the Estate of Glen Serby and Fegley Johnson including the motions to substitute judges. Carey testified that the practice of filing repeated motions to change judge does not cause a tremendous amount of turmoil to his office though it adds some work. (Tr. 332, 334)

Respondent testified that he "may have" done some investigation into the facts that he alleged in his motions to substitute judges but was unable to identify any specific investigation. (Tr. 1043-1044)

Findings of Fact and Conclusions of Law

We find Respondent's motions for recusal to be frivolous and to have no basis in law or fact and furthermore find it highly unlikely that he conducted any sort of investigation into the facts alleged in his motions.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct: asserting a position on behalf of a client that serves merely to harass or maliciously injure another in violation of Rule 1.2 (f)(1); making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3 (a) (1); making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, violation of Rule 8.2 (a); and engaging in conduct that is prejudicial to the administration of justice In violation of Rule 8.4(a)(5).

61

Count IX

Complaint

On May 26, 1994. Respondent wrote to Ray Breen, who was then Executive Director of the Judicial Inquiry Board, regarding the Chief Judge of the Thirteenth Judicial Circuit, Robert L. Carter. In his correspondence to Breen Respondent alleged that Judge Carter "won't make the circuit clerk follow Illinois Law." Respondent stated tat Judge Carter and the clerk, David Carey were engaged In a political conspiracy:

David Carey's bond failed to comply with Illinois law.. .While you have to understand that I don't know for sure, but I think these issues are being avoided because both Carter and Carey are Democrats. After all, if party unity doesn't mean something, then what does?

The complaint alleges Respondent engaged in: making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; engaging in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

Respondent denies all allegations contained in this count.

Evidence

David Carey the LaSalle County Circuit Court Clerk testified that on or about December 15, 1993 he received a facsimile at his office containing certain allegations regarding Judge Carter and

62

Carey's bond. The question raised in the facsimile was whether or not Carey had a proper bond (as required by law) to operate as clerk. The facsimile alleged that Judge Carter had ignored Carey's failure to supply adequate bond because they were both Democrats. Judge Carter received the same facsimile as Carey and believes it was authored by Respondent. Carey denied he and Judge Carter agreed to ignore Carey's alleged failure to post the proper bond. Carey further testified that when he received the facsimiles he spoke with Judge Carter who asked that they contact the proper authorities (the county clerk and the Secretary of State). (Tr. 322, 323, 324, 327, 329, 335, 430, 506, Admin. Ex. 51)

Prior to these allegations Carey testified that no one had raised such a concern about his bond. Carey added that he had the county attorney check the bond when he filed it and that he had called the County Clerk's office and the Secretary of State's office on numerous occasions to verify there was no problem with the bond. Carey believes Judge Carter may have signed his bond as it is required that two circuit judges sign such a bond. It is Judge Carter's understanding that the bond must be approved by two circuit court judges. Judge Carter and Judge Perona (who was elected as a Republican) signed the bond for Carey. Judge Carter observed that he and Judge Lanuti (who was elected as a Democrat) approved the binder. Judge Carter further noted that at some point the bond was signed by Judge Lanuti and Judge Ryan (who was elected as a Republican). Judge Carter denied that he ignored the issue of whether proper bond bad been posted. Judge Carter testified that the information he had was that Carey's bond was "very valid." (Tr. 430-431)

John Betts testified he had occasion to investigate Carey's surety bond. Betts testified the bond did not have the signature of the local agent as is required and the original documents had not been filed with the Secretary of State. (Tr. 840)

63

On or about March 8. 1994, March 26, 1994 and April 4, 1994 Carey received three more letters via facsimile. These letters included allegations that Carey's bond was defective and that Carey and Judge Carter were conspiring to cover-up its defects. The facsimiles further alleged that Carey's office unlawfully destroyed court records which caused Respondent's

client, John Betts, great difficulty in obtaining satisfaction of a judgment he received in the Betts v. Mettille small claims case. Carey noted that the faxes appear to have been signed by Respondent and that they were also sent to the Sheriffs department and the County Attorney. Carey testified he telephoned Respondent's office on one occasion to discuss the facsimiles and that he once spoke with Respondent in the court house. The conversation was brief and included Carey asking that Respondent stop by the Clerk's office to review the facsimiles. Following that conversation Carey received very few facsimiles on that issue. Carey's office also provided Betts with information on the record keeping protocol as set forth by the Administrative Office of the Illinois Courts and, he believes, a copy of the index book. Carey believes the same information was provided to Respondent. (Tr. 323-326, 331-332, 339, 351-352, Admin. Ex. 51, 53, 54)

Judge Carter testified that in March of 1994 Craig Armstrong who was, at that time, an attorney in LaSalle County. also received a letter alleging that Judge Carter and Carey were conspiring to coverup Carey's lack of proper bond. Armstrong gave Judge Carter that letter between two and four months later. (Tr. 427)

Respondent-testified he does not believe he ever spoke to Betts about the facsimiles. Respondent further testified Betts has never indicated to him, and he never asked, who authored the facsimiles. (Tr. 1048)

64

Findings of Fact And Conclusions of Law

We find Respondent sent the correspondence to the named parties and that he did so in an effort to harass David Carey and Judge Carter.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct: making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2 (a); engaging in conduct that is prejudicial to the administration of Justice, in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Count XI

Complaint

On March 8; 1994, Respondent wrote to Dan Meuller, in the Administrative Office of the Illinois Supreme Court. Respondent alleged that David Carey, Clerk of the Circuit Court of LaSalle County, had improperly destroyed an active file in the case of Betts v Mettille, 88 SC 2538, On April 4, 1994, Respondent wrote to Jim Baker, Vice-President of Western Surety Company, the company which provided the Circuit Court Clerk's surety bond. He stated that "The Chief Judge, fellow democrat (sic) of Carey, wants to just ignore the matters. That's been forwarded onto the Illinois Judicial Inquiry Board for them to sort out."

The complaint alleges Respondent engaged in: making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; engaging

in conduct that is prejudicial to the administrat... of justice in

65

violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

Respondent denies all allegations contained this count.

Evidence

John Betts testified he was a pro se plaintiff in the Betts v. Metteille case, a small claims case for collection of fees. Betts received a judgment in the matter in 1988 or 1989. Betts testified that subsequent to the entering of the judgment he required the case file and the documents contained within it in order to have the sheriff sell the property that Meteille owned. Betts testified that because the documents were not available he suffered a pecuniary loss. Upon discovering the file had been destroyed Betts and Poppy Mitchell, a clerk in the office of the Circuit Court Clerk, went to see Judge Carter. Betts testified that Judge Carter said he could not believe they would destroy a file that was still active, Judge Carter then, according to Betts, sent him to Judge Marshall to have Marshall sign a memorandum of judgment for him Betts then filed the memorandum of judgment but the sheriff would not sell off the property because, Betts testified, he did not have the court file. Beds testified that as a result he lost about $40.OOO. (Tr. 836-839)

Daniel Mueller testified that he is with the Administrative Office of the Illinois Courts and that in

1994 he was liaison for the Office of the Courts; In that capacity Mueller assisted County Court Clerks in keeping records, On or about March 8, 1994 Mueller received a facsimile from, he believes, Respondent containing a claim that Carey was unlawfully destroying court records. Mueller testified he has no way of knowing whether Respondent actually sent the facsimiles as the

66

machine from which the letter was sent did not provide identification on the document. Mueller and Carey testified that a manual on record keeping governs the destruction of court files and requires that the Administrative office examine the records prior to destruction. Mueller testified that in 1988 (the time at issue) the procedure for destruction of small claims records was that the clerk would, after three yeas, fill out a form indicating his intent to destroy the court records and identify those they intended to destroy and certify that they are no longer of legal value. Once the Administrative Office of the Courts receives the form and gives approval the file is destroyed without being microfilmed so long as the judgment has been entered in a judgment index book. All other court records are microfilmed prior to destruction. The procedure was the same in 1994 and, he believes, remains the same as of the date of this hearing. Mueller testified that when he received the facsimile he sent a copy to Carey. Mueller also called Carey and asked if he was having a problem with small claims cases and whether he needed assistance. Neither Carey nor Mueller can recall receiving any other complaints regarding destruction of small claims files by Carey's office. Mueller does not believe he responded to

Respondent's letters in writing nor did he speak to him by phone. Carey testified that the allegations of improper destruction were never found to have occurred by any court or administrative agency. (Tr. 325, 327, 330-331, 335, 338, 341, 345, 364-369, 371, 373-374, 377, Admin. Ex. 53)

James Herbert Baker testified that he is Claim Counsel Vice President for Western Assurance Company. -a company that writes bonds for public official notaries. Western Assurance held the public official bond for Carey in 1994. Baker identified a facsimile received by his company on April 4, 1994. When Baker received the facsimile he wrote Respondent and requested a clearer copy of page two as it was obscured. Respondent then forwarded a clearer copy by facsimile. Baker also

sent a copy of the fax to Carey. Carey responded and Baker sent a copy of that response to Respondent. Baker does not believe Respondent sent any documentation in supped of his contentions. (Tr. 357-359. 361-362, Admin. Ex. 54)

Findings of Fact and Conclusions of Law

We find by clear and convincing evidence that Respondent did send these facsimiles and base this belief upon the fact that when Baker requested from Respondent a clearer copy of a page of the fax he received that copy. In our view this negates Respondent's assertion that someone else sent the facsimiles. It sketches credulity to believe that another party not only sent the facsimile to Mr. Baker but also intercepted the letter from Baker and responded to it without Respondent's knowledge.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Count XII

Complaint

As of May 12, 1988, Respondent had not been admitted to practice in the U.S. District Court for the Central District of Illinois. On that date Respondent appeared before the U.S. District Court for the Central District of Illinois. In 1988, Local Rule 1(E) of the United Sates District Court for the Central District of Illinois provided that "[a]ny person who, before his or her admission to the bar of this Court...exercises in this District any of the privileges of a member of said bar in any action or proceeding pending in this Court, or who pretend to be entitled to do so. may be adjudged

68

guilty of contempt of Court." Respondent's appearance on May 12, 1988 violated the regulations of the legal profession in the U.S. District Court for the Central District of Illinois.

The complaint alleges Respondent engaged in: practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction and engaging in conduct that is prejudicial

to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

Answer

Respondent admits he appeared before the U.S. District Court for the Central District of Illinois on May 12, 1988 but denies all other allegations contained within this count.

Evidence

Respondent testified that on May 12, 1988 he appeared in the case of Betts v. Wilson on behalf of John Betts though he stated he had no independent recollection of that. At that time Respondent was aware of local Rule 1(E) of the Federal Court. Central District of Illinois, regarding unauthorized practice of law. Respondent testified that he could not recall if he was aware in 1988 that the Central District of Illinois had a rule regarding unauthorized practice nor could he recall stating he was aware of such a rule at his deposition in December of 1996. Respondent testified that when he appeared in the Betts v. Wilson case in the Central District he believes he was authorized to practice in the Central District. (Tr. 548-550, 552, 559)

Respondent recalled a criminal contempt proceedings being instituted against him for his appearance on May 12, 1988 in the Central District Court and recalled Judge Mills presiding in that case. Respondent believes there was an appeal filed regarding his conviction for criminal contempt and the contempt finding was affirmed. (Tr. 560-561, 563. Admin. Ex. 57 and 58)

69

Betts represented Respondent in the criminal contempt case and Tom Karmgard was then an assistant U.S. Attorney. Karmgard submitted a

complaint regarding Respondent to the ARDC and Betts prepared a response. Betts conducted an investigation and found several other attorneys who were not licensed in the Federal Court, Central District of Illinois and no action was taken by the ARDC against any of them. (Tr. 884, 848, 854, Res. Ex. 1)

Betts testified he researched whether there was a rule applicable in the Central District in reference to admission to practice and determined local rule 1 (E) was invalid because it was not put out for public comment prior to enactment. Further, Bet testified, the executive committee of the Seventh Circuit ordered that all rules not put out for public comment were to be withdrawn and replaced. (Tr. 863-864)

Betts testified that at that time the clerk of the district court maintained attorney admission records on file cards. Betts went to the court and was unable to find a card reflecting that Respondent was admitted to practice in the central district. Betts testified he then told Respondent to be admitted to practice in that district and Respondent did so. After his initial search another search was run and Respondent's admission card was found showing Respondent was admitted January 19, 1989. Betts testified he ran such search to show Judge Mills what happened. Ultimately, Betts testified, the matter was closed. Tr. 868-870, 872- 873, 897, Res. Ex. 26)

Respondent testified that he was, in fact, admitted to the Central District, that he was admitted- in Peoria in 1988 or 1989. Respondent acknowledged he never attended a swearing in ceremony of any sort in the Central District. Respondent believed he had a certificate evidencing authorization to practice in the Central District but when he looked he was unable to

locate one. Respondent believed he had been licensed to practice in the Central district because he had filed

some documents there. Respondent testified when it was brought to his attention that he was not admitted in the Central District he again paid his fee and submitted his form for admission. (Tr. 955- 956, 959, 1038-1040, Res. Ex. 26)

Findings of Fact and Conclusions of Law

We find Respondent's allegations of poor record keeping on the part of the District Court to be without credibility.

We find the Administrator proved by clear and convincing evidence that the Respondent engaged in practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

Count XIII

Complaint

On or about October 17, 1991, Johanna R. Yeager was injured during the course of her employment with Today Cartage, Inc., while using a pressure washer. On or about October 26, 1991, Respondent and ten-attorney John A. Betts, agreed to represent Ms. Yeager before the Illinois Industrial Commission in matters relating to the October 17, 1991 incident. On or about November 4, 1991, Respondent and Betts, on behalf of Ms. Yeager, filed an Application for Adjustment of Claims before the Illinois Industrial Commission. The Secretary of the Commission docketed the mailer as Johanna Yeager v. Today Cartage Inc number 91 WC 57188. Between November 4, - 1991 and January

12,1995; Respondent took no action to pursue case number 91 WC 57188. On January 12, 1995, the Industrial Commission issued an order dismissing case number 91 WC 57188 for want of prosecution. The Industrial Commission notified Respondent of the dismissal on or about March 3, 1995, and Respondent knew or should have known of the dismissal shortly

71

thereafter. In 1995, Respondent knew that Betts had been disbarred on September 27, 1993, and that Beds could no longer represent Yeager in matters relating to case number 91 WC 57188. Respondent did not advise Ms. Yeager that case number 91 WC 5788 had been dismissed or take action to reinstate the case. Between November 4, 1991, and March 31, 1995, Ms. Yeager telephoned Respondent between 20 and 30 times to inquire as to the status of her case. Respondent returned only three telephone calls to Ms. Yeager during that time. In late 1994 or early 1995, Respondent telephoned Ms. Yeager and left a message on her answering machine. Respondent's message to Yeager was the he had received a demand letter from the defendant and that everything was "going fine." Respondent telephoned Ms. Yeager on Or about March 31, 1995, but Ms. Yeager was not at home. Respondent left a message for Ms. Yeager with her son stating that "everything was settled." Respondent's statements concerning the status of case number 91 WC 57188 were false at that time that he made them because case number 91 WC 75188 had been dismissed. On or about March 31, 1995, Ms. Yeager discovered that case number 91 We 57188 had been dismissed and hired a new attorney to represent her in that matter.

The complaint alleges Respondent engaged in: failing to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Illinois Rules of Professional Conduct failing to keep a client reasonably informed about the status of a matter in violation of Rule 1.4 of the Illinois Rules of Professional Conduct; failing to make reasonable efforts to expedite litigation consistent-with the interests of the client in violation of Rule 3.2 of the Illinois Rules of Professional Conduct; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation m violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct; engaging in conduct that is prejudicial to the administration of justice in violation of Rule 8,4(a)(5) of the Illinois Rules of

72

Professional Conduct; and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

The Respondent denies all allegations contained in this count.

Evidence

On or about October 17, 1991, Joanna Yeager was injured in a work related accident. Ms. Yeager testified that when she initially met with John Betts at his home he told her she would be retaining Respondent's services as well as his own. Betts testified Johanna Yeager had been a client of his for a long period of time regarding a work related accident. Betts testified he was a licensed attorney at that time and he believes he prepared an application for adjustment of

claim, a contract and some medical releases. Ms. Yeager testified the representation agreement shows John Betts and Respondent as her attorneys and provided for her to pay Respondent and Betts one third of any recovery. Respondent and Betts however, testified the representation agreement called for him to receive the statutory maximum of twenty percent. Betts testified he put Respondent's name on the application to the Industrial Commission with Respondent's permission and that he did this as he believed it was in the best interest of his client as he was encountering difficulties with the ARDC at that time. Respondent testified that he and Betts never had an agreement under which Respondent became transitional counsel for all of Betts' cases. Rather, Respondent testified, Betts had told him that he might put Respondent's name on some of his cases in the event that there might be trouble. Betts was unable, however, to state with certainty that Respondent was aware his name was on this particular case. Ms. Yeager testified that in September of 1993 Respondent did not inform her Betts had been disbarred and could no longer represent her. Respondent, in contrast, testified that he told

73

Ms. Yeager that Betts' license to practice law had been revoked. Betts testified Yeager called him often after his disbarment and he told her to call Respondent. Bet was unable to recall specifically when he physically transferred the Yeager file to Respondent though he believes it was within a few days of his disbarment. Respondent cannot recall when Betts told him that he was responsible for the Yeager matter due to Betts' disbarment in fact it is possible that Betts did not tell him at all and Ms. Yeager informed him. Tr. 523-524,

534, 544, 874-873, 880, 899, 901-902, 904, 908, 953. 1048-1051, Admin. Exs, 26, 64)

Ms. Yeager testified she spoke with Betts two or three times and never had written correspondence with him. In September of 1993 Ms. Yeager attempted to locate Respondent by phone when Betts changed his telephone number. Betts testified this occurred when he was disbarred. Ms Yeager further testified she went to his office in person in an effort to locate him. Ms. Yeager testified that no one was at Respondent's office on the occasion she went there in the fall of 1993. On that occasion, however, Ms. Yeager testified she sat outside the door to Respondent's office for four horns. Ms. Yeager testified that per the request of someone in Respondent's office, she sent Respondent physical therapy and doctors bills from Sandwich hospital and Dr. Dale Grimes which related to her accident from mid 1993 through 1994. She never received any response from Respondent with reference to those documents. Respondent in contrast, testified he never received medical records from Ms. Yeager. Furthermore, Respondent testified Ms. Yeager did not provide him with authorization to obtain such records.- Respondent testified he requested the $75.00 required to obtain such records and Ms. Yeager told him she did not have the funds. Respondent further testified he sent a subpoena to a Dr. Grimes and, in return, he received a letter indicating Dr. Grimes had never treated a patient by that name. Respondent testified that when he

74

asked Ms. Yeager about it she said the doctor was not telling the truth Tr. 525-526, 534-535, 544-545, 887, 929-930. 933-934, Res. Ex. 20)

Ms. Yeager testified the medical bills were never paid and she knows this to be true because in 1993 a collection agency began "chasing" her. Ms. Yeager informed the collection agency that she had an attorney and provided them with Respondent's name and phone number. Ms. Yeager testified she never had any response from Respondent after referring the collection agency to him. At a later date the collection agency contacted Ms. Yeager and informed her that they had called Respondent's office on numerous occasions between September of 1993 and March of 1994 and left detailed messages on his answering machine as to exactly what they needed. Respondent testified Ms. Yeager had asked him to pay medical bills she incurred prior to retaining his services and he informed her he could not do that because it was unethical to advance money to pay bills etc. Respondent testified that shortly after that Ms. Yeager terminated him as her attorney. Tr. 526-530, 948-949)

Ms. Yeager testified that between November of 1991 and March of 1995 she called the Respondent approximately 150 times, long distance, and left messages at Respondent's office in LaSalle, Illinois. Ms. Yeager testified Respondent never responded to those calls until she informed him she was going to file a complaint against him. When Respondent did return Ms. Yeager's call she did not speak with him rather he left a message with Ms. Yeager' s son, Steve Yeager. Joanna Yeager's sixteen-year-old son testified that he spoke with Respondent when he phoned Ms. Yeager on one occasion. Mr. Yeager testified that he took a message for his mother wherein Respondent said everything was taken care of and that there was nothing to worry about anymore. Mr. Yeager testified

he imparted that message to his mother. Respondent testified that Joanna Yeager phoned

75

him between twenty and thirty times and that they did speak on many occasions and left messages on her answering machine. On those occasions, Respondent testified, he told her that the case could take one or two years and that they would wait before having her examined by a physician. Respondent had no recollection of a message from Ms. Yeager wherein she indicated that if he did not respond to her call she would report him to the ARDC. Ms. Yeager testified she did not return that phone call because Respondent had said everything was taken care of and not to worry. (Tr. 530-531, 537; Tr. 545-547, 927-928, 1036)

Respondent testified that on May 3, 1995 he discovered the case had been dismissed with prejudice by the arbitrator. The case was dismissed because he was not receiving notices from the Industrial Commission as his address was not properly recorded by the Commission. Beds testified he received mail from the Industrial Commission addressed to Respondent regarding the Yeager mailer after his disbarment and that he returned that mail to the Industrial Commission. Betts testified that he does not believe he informed Respondent or Ms. Yeager that he had received such mail. Respondent further testified that he never changed his address with the Industrial Commission because lie did not know it was incorrect. When Respondent discovered the case had been dismissed he filed a motion to have the case reinstated. The case was reinstated and set for hearing May 31, 1995. The Respondent noted that in excess of 7,000 cases were dismissed by the Industrial Commission in

1995. After having the case reinstated Respondent phoned Ms. Yeager and spoke with her son to whom he told he had filed the reinstatement motion. Respondent testified he then made an appointment for Ms. Yeager with Dr. Fisher, an evaluating physician, for Thursday. May 11, 1995. Respondent confirmed the appointment with a letter to Dr. Fisher and sent a letter to Ms. Yeager informing her of the appointment. Respondent testified he also called Ms. Yeager and read

76

part of the letter into her answering machine. The day prior to the examination, Respondent testified. he called Ms. Yeager again and left a phone message reminding her of the appointment Respondent testified he called her once again the day after the appointment and left a message. On May 15, 1995 Respondent phoned Dr. Fisher's office and found that Ms. Yeager had not appeared for her appointment on the 11th. Ms. Yeager testified that she had no recollection of Respondent making an appointment for her with Dr. Fisher in Chicago. Respondent testified he appeared for the hearing on May 31, 1995 and found another attorney, Peter Lekas, there on behalf of Ms. Yeager. Lekas then filed a motion to have Respondent removed from the case, Respondent did not object and the motion was granted. (Tr. 538, 903, 934, 941-946, 950-952, 1034-1035, 1037, 1047, Res. Ex. 20)

Ms. Yeager testified that Respondent did not tell her between January and March of 1995 that her case bad been dismissed and she discovered this when she telephoned the Industrial Commission. Ms. Yeager was told by the Industrial Commission that Respondent had failed to appear. Following Ms. Yeager's discovery

that the case had been dismissed she obtained the services of Peter Lekas. The case has now been reinstated and settled. Ms. Yeager received approximately $6,893.84 and paid approximately $3,800.00 in medical bills out of this sum, fees she felt should have been paid long before that since that is what Lekas told her was normal in worker's compensation cases. Respondent testified that Ms. Yeager never asked him whether worker's compensation insurance would pay her medical bills. Ms. Yeager had no knowledge that the case was dismissed again while Lekas was representing her until the case was over when Lekas informed her of such. Ms. Yeager testified that she did not file a complaint with the ARDC regarding Lekas, (Tr. 531-532, 537-538, 540-541, 543, 1033)

77

Findings of Fact and Conclusions of Law

We find the testimony of the Yeagers to be far more credible than that of Respondent and Betts. Specifically we find it impossible to believe that Betts was receiving notices from the Industrial Commission and not forwarding them to Respondent. The allegations that Betts simply returned the items to the Industrial Commission strikes us as an excuse concocted by Betts and Respondent.

We find that the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct: failing to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3; failing to keep a client reasonably informed about the status of a matter in violation of Rule 1.4; failing to wake reasonable efforts to expedite litigation consistent with

the interests of the client In violation of Rule 3.2; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4); engaging in conduct that Is prejudicial to the administration of justice in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession Into disrepute in violation of Supreme Court Rule 771.

Evidence in Mitigation

Respondent testified that he has engaged in pro bono work including the appeal of one criminal case entitled People of the State of Illinois v. Martin Gibbs) and the trial of a misdemeanor and felony charge against Gibbs. Respondent also represented Susan Knotts in a misdemeanor case that was dismissed and in a civil suit. Respondent represented Mark and Diane Griffiths pro bono in a bankruptcy. Respondent testified he is in the process of representing Beatrice Escatel in a felony case pro bono. Respondent testified he is representing Kenneth Yeager in a delinquent child support case on a pro bono basis. Respondent further testified he represented Robert Jeskowiak in a driving under the influence case and a criminal air pollution case which was a jury trial. Finally, Respondent

78

testified he represented Carmen Harris Washkowiak in the defense of a petition to change child custody. Respondent also testified he was appointed to two cases by the Seventh Circuit Court of Appeals. (Tr 1005-1008)

RECOMMENDATION

The purpose of the disciplinary system is to protect the public, maintain the integrity of the legal

system and safeguard the administration of justice. In re March, 71 Il1.2d 382,395,376 N.E.2d 213 (1978). Additionally, the sanction imposed upon an attorney in a disciplinary case should reflect the unique facts of that case. See generally In re Cheronis 114 Ill.2d 527, 502 N.E.2d 722 (1986).

We have determined tat the Administrator proved by clear and convincing evidence that Respondent made statements about judges which he knew to be false or with reckless disregard for their truth or falsity concerning their qualifications and integrity in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct in Counts I, II, III, V, VI, VII, VIII, IX, X and XI. We have determined that the evidence presented clearly indicates Respondent made these statements with no basis in fact and made them for purposes of causing a delay in the proceedings. We note that while Respondent brought out testimony indicating the judges in question did not sanction him for these stratagem this is insignificant for our purposes and not at all dispositive of whether these were actually delay tactics.

However, we cannot stop with the counts involving statements about judges. We further find that Respondent's neglect of the Yeager matter, his efforts to practice law in a jurisdiction where he was not licensed and his communication via facsimile of scurrilous and unfounded accusations regarding an elected official require examination and sanction. Regarding the issue of Mr. Carey's bond we are disturbed by Respondent's accusations

against both Mr. Carey and Judge Carter. We find no reason to believe that Mr. Carey's bond was defective (although that is not at issue in the instant case) and, even if we suspected the bond was defective, we believe this would be simply another instance of the Respondent exaggerating an honest error. While there is no direct evidence that Respondent sent these facsimiles we nevertheless are convinced that the Administrator proved this count by clear and convincing evidence. We base this belief upon the testimony of Mr. Carey that he confronted Respondent with the facsimiles and asked him about them and the testimony of Mr. Baker wherein he stated that he wrote a letter to Respondent requesting a clearer copy of one of the pages and received a response. While we are aware we base this conclusion upon circumstantial evidence we are satisfied that it is appropriate. The Appellate Court of Illinois, First District, ruled that proof of authorship may be based upon direct or circumstantial evidence and in making such a determination the court must view all evidence including issues of credibility most favorable to the proponent. Kotsias v. Continental Bank, 601 N.E.2d 1185, 1187, 235 Ill.App.3d 472, 474 (1992) citing E. Cleary and M. Graham, Handbook on Illinois Evidence §901.1 (5th Ed. 1990). If the court determines after considering the whole of the evidence that it supports a finding of a preponderance of the evidence, the evidence may be admitted. Id. We further note that Respondent's efforts to introduce Respondent's exhibit 43, a letter from David Carey to Jim Baker of Western Surety, were most irregular and while it was admitted when the Administrator dropped her objection, we still

feel this document should have been produced to Administrator's Counsel prior to the day of the hearing.

On the issue of Betts' right to discharge the debt owed to the ARDC, we find Respondent's efforts in this matter to be completely without merit. We find Section 523 of the Bankruptcy Code is clear on this point and Respondent's insistence on pursing the theory that it was, in fact,

80

dischargeable, to be the epitome of a violation of Rules 3.1 of the Illinois Rules of Professional Conduct.

On the issue of the neglect of the Yeager mailer, we note that cases involving neglect of client matters have met with imposition of sanctions ranging from censure to disbarment when not combined with other rule violations. The Court has generally held, however, that single instance of neglect and misrepresentation of the stabs of litigation to a client warrants a censure. See e.g., In re Kink 442 -N.E.2d 206, 92 Ill 2d 293 (1982), In re Mason, 522 N.E.2d 1233, 122 Ill.2d 163 (1988). and In re Winn, 469 N.E.2d 198, 103 Il1.2d 334(1984). In any event we feel that this count standing alone would warrant only minor discipline but because it stands with a multitude of other counts, it only aggravates what we feel is the heart of the complaint, the charges involving false statements and frivolous matters.

Regarding the issue of practicing in the central district without a license we find that Respondent was not, in fact, licensed in that court and, therefore, practiced law in a jurisdiction where doing so violated the regulations of the legal profession in that jurisdiction. We base this finding on the records of that court and Respondent's testimony that he could not

recall having ever taken an oath in the central district. As in the count involving neglect in the Yeager case we do not believe this count standing alone, would warrant significant disciple but in the aggregate, with the surrounding counts, we feel this adds to our conviction that Respondent should be subject to significant discipline.

The Administrator asks that we recommend Respondent be disbarred. In support of this she directs us to In re Spears In re Palimsano In re Jafree and Pennie ex rel. Chicago Bar Association v. Metzen.

81

In re Jafree is a situation where the respondent was accused in a complaint of having instituted numerous defamatory and frivolous lawsuits, appeals and administrative actions. Jafree 444 N.E.2d 143, 145, 93 Ill.2d 450, 452 (1983). Jafree had filed a multitude of lawsuits in Federal Court naming as defendants the former Illinois Attorney General, various judges, lawyers. lay persons and a former President of the United States. These lawsuits were generally based on employment discrimination and other civil rights violations. The suits sometimes named himself as plaintiff but also were filed on behalf of others. 14. at 145, 452. Once proceedings began before the ARDC Jafree filed several more lawsuits in Federal district court seeking to enjoin the disciplinary process. 14. at 146,453. During the pendency of the disciplinary proceedings Jafree also filed lawsuits under a fictitious names. Id. at 146, 453. Jafree's lawsuits alleged an ongoing conspiracy between the defendants to violate his constitutional rights. 14. at 146, 453. The Court, once they determined they had jurisdiction and that the Administrator had proved by clear and convincing

evidence that Jafree had instituted frivolous and defamatory litigation, resolved that the appropriate sanction was disbarment. 14, at 150, 462.

The Jafree case is substantially similar to the instant case as both Jafree and Respondent have used the court system in an effort to harass members of the judiciary. In addition both Jafree and Respondent alleged that the Administrator of the ARDC was without jurisdiction over them in reference to any proceedings in the Federal district court. In Jafree the court states, "That certain instances of respondent's alleged misconduct occurred before other tribunals does not affect our power, and indeed duty, to consider the propriety of his conduct." 14. at 147, 456. In meting out the disbarment the court noted that it is apparent that filing frivolous and defamatory lawsuits is conduct warranting disbarment. 14. at 148, 460, citing People ex rel Chicago Bar Association. v.

82

Metzen 291 Ill. 55, 125 N.E. 734 (1919).

In re Palmisano presents a similar situation. There the Review Board found Palmisano statements regarding judges were sometimes made in retaliation for adverse rulings or actions take by those judges against Palmisano. In re Palimsano Review Rd. Rept. 92 CH 109. We believe this was true in the instant case as well. Respondent engaged in a pattern or harassing conduct and malicious and unfounded statements against, among other, a judge to whom he lost a judicial election. Id. The Review Board recommended that Palmisano be disbarred based on Jafree They found Jafree applicable due to the nature, frequency and repetition of Palmisano's accusations. Id.

The Respondent in the instant case would have us believe that the entire Thirteen Judicial Circuit was stacked against himself and Mr. Betts. We find this unsubstantiated and based on unwarranted suspicion. With the exception of one judge, they all testified that they continue to hear cases wherein Respondent represents parties and Respondent does not request that they be removed. This indicates to us that even Respondent is aware his allegations are baseless. This leads us to the conclusion that Respondent's efforts to remove judges was simply a delay tactic. While delaying a case, or even several cases, alone is not sufficient for recommended severe sanction, we believe that the manner in which Respondent went about these delays warrants a serious sanction.

We are particularly disturbed by Respondent's grasping of minor technicalities and his efforts to suggest that the errors connected to small details is somehow symptomatic of a grand conspiracy through the entire state and federal court system. We must add that often these minor errors did not even occur. Therefore, based simply upon the counts involving Respondent's penchant for repeatedly attempting to remove judges from cases for cause and making frivolous assertions we feel a severe sanction is warranted.

83

Finally, we point as evidence of aggravation to the repeated frivolous, baseless and simply ridiculous motions Respondent filed in the instant case. As an example we highlight the absurd motion Respondent filed in an effort to prevent a pre-hearing from being held. In his motion the Respondent boldly stated that telephonic pre-hearing conferences are not permitted

and, in any case he objected to a pre-hearing conference being held without a court reporter. The substance of Respondent's motion indicates a complete lack of investigation. Had Respondent investigated, he would have been aware that all pre-hearing conferences, including the conference Respondent was attempting to prevent, are held in the presence of a court reporter and, other than the initial conference, there is no requirement such conferences be held in person. We single out this motion merely as an example of Respondent's obstructionist behavior. Ultimately we find Respondent's pre-hearing actions to efforts to obstruct justice. We note that the Seventh Circuit Court of Appeals, when faced with the antics of Respondent suspended his privilege to practice law in the district until he complied with the Court's directive to furnish a list of all sanctions leveled against him and demonstrates that all sanctions have been paid in full. In the Matter of John A. Maurice debtor. Appeal of Kenneth A. Kozel 723 Fed.3d 124, 125-126 (1995). The Court leveled this sanction after determining that Respondent had filed a frivolous appeal. The Court determined the appeal was frivolous based upon a lack of jurisdiction in the district court, Respondent's failure to file a timely brief and a lack of merit to the contentions in that brief 14. at 127. Based upon the panel's dealings with Respondent and the evidence presented in the instant case we believe obstructionist behavior on Respondent's part is not limited to his dealings in the Federal Court but instead is the hallmark of his practice. We feel this is a significant matter in aggravation of the rule violations proven in this disciplinary matter.

Therefore based upon Jafree and Palmisano as well as the Respondent's behavior before this panel, we recommend the Respondent be disbarred.

Date: November 5, 1997 s/Vincent F. Vitullo

Vincent F. Vitullo, Chair of the Hearing Panel, with Frances Skinner and Robert Adams, Panel Members, concurring.

85